

2008

# State of Utah vs. Bradford Dale Gettling : Brief of Appellee

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_sc2](https://digitalcommons.law.byu.edu/byu_sc2)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Marian Decker; Mark Shurtleff; Utah Attorney General; Counsel for Appellee.

Margaret P. Lindsay; Counsel for Appellant.

---

## Recommended Citation

Brief of Appellee, *Utah v. Gettling*, No. 20080037.00 (Utah Supreme Court, 2008).

[https://digitalcommons.law.byu.edu/byu\\_sc2/2754](https://digitalcommons.law.byu.edu/byu_sc2/2754)

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

[http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

Case No. 20080037-SC

---

IN THE  
UTAH SUPREME COURT

---

State of Utah,  
Plaintiff / Appellee,

vs.

Bradford Dale Gettling,  
Defendant / Appellant.

---

Brief of Appellee

---

Appeal from conviction for possession of methamphetamine, a third-degree felony, in the Fourth Judicial District Court of Utah, Utah County, the Honorable James R. Taylor presiding.

---

MARGARET P. LINDSAY  
775 W. Center Street  
P.O. Box 1058  
Spanish Fork, Utah 84660  
  
Counsel for Appellant

MARIAN DECKER (5688)  
Assistant Attorney General  
MARK L. SHURTLEFF (4666)  
Utah Attorney General  
160 East 300 South, 6<sup>th</sup> Floor  
P.O. Box 140854  
Salt Lake City, UT 84114-0854  
Telephone: (801) 366-0180

JEFFERY R. BUHMAN  
Utah County Attorney  
  
Counsel for Appellee

---

FILED  
UTAH APPELLATE COURTS

JAN 22 2009

Case No. 20080037-SC

---

IN THE  
UTAH SUPREME COURT

---

State of Utah,  
Plaintiff / Appellee,

vs.

Bradford Dale Gettling,  
Defendant / Appellant.

---

Brief of Appellee

---

Appeal from conviction for possession of methamphetamine, a third-degree felony, in the Fourth Judicial District Court of Utah, Utah County, the Honorable James R. Taylor presiding.

---

MARGARET P. LINDSAY  
775 W. Center Street  
P.O. Box 1058  
Spanish Fork, Utah 84660  
  
Counsel for Appellant

MARIAN DECKER (5688)  
Assistant Attorney General  
MARK L. SHURTLEFF (4666)  
Utah Attorney General  
160 East 300 South, 6<sup>th</sup> Floor  
P.O. Box 140854  
Salt Lake City, UT 84114-0854  
Telephone: (801) 366-0180

JEFFERY R. BUHMAN  
Utah County Attorney  
  
Counsel for Appellee

---

## TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii	
STATEMENT OF JURISDICTION .....	1	
STATEMENT OF THE ISSUE .....	1	
CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES.....	2	
STATEMENT OF THE CASE.....	2	
STATEMENT OF THE FACTS.....	3	
SUMMARY OF THE ARGUMENT.....	7	
ARGUMENT		
PASSENGERS ARE REASONABLY DETAINED INCIDENT TO A TRAFFIC STOP UNTIL ALL THE LAWFUL OBJECTIVES OF THE STOP ARE COMPLETED, INCLUDING SEARCHING THE PASSENGER COMPARTMENT INCIDENT TO THE DRIVER’S ARREST .....		8
CONCLUSION.....	22	
ADDENDA		
Addendum A:	Ruling and Order on Defendant’s Motion to Suppress	
Addendum B:	Preliminary Hearing transcript	
Addendum C:	Order of Certification	
Addendum D:	Order granting Petition for Writ of Certiorari	
Addendum E:	Newspaper articles	

## TABLE OF AUTHORITIES

### FEDERAL CASES

<i>Brendlin v. California</i> , 127 S.Ct. 2400 (2007) .....	<i>passim</i>
<i>Foley v. Connelie</i> , 435 U.S. 291 (1978) .....	10
<i>Illinois v. Caballes</i> , 543 U.S. 405 (2005) .....	19
<i>Knowles v. Iowa</i> , 525 U.S. 113 (1998) .....	21
<i>Maryland v. Pringle</i> , 540 U.S. 366 (2003) .....	21
<i>Maryland v. Wilson</i> , 519 U.S. 408 (1997) .....	<i>passim</i>
<i>Meuhler v. Mena</i> , 544 U.S. 93 (2005) .....	19
<i>Michigan v. Long</i> , 463 U.S. 1032 (1983) .....	10
<i>Michigan v. Summers</i> , 452 U.S. 692 (1981) .....	11, 12
<i>New York v. Belton</i> , 453 U.S. 454 (1981) .....	18, 19
<i>Pennsylvania v. Mimms</i> , 434 U.S. 106 (1977) .....	10, 13, 14, 15
<i>Rogala v. District of Columbia</i> , 161 F.3d 44 (D.C. Cir. 1998) .....	16
<i>United States v. Hernandez</i> , 418 F.3d 1206 (11th Cir. 2005) .....	20
<i>United States v. Mendez</i> , 476 F.3d 1077 (9th Cir. 2007) .....	20
<i>United States v. Moorefield</i> , 111 F.3d 10 (3rd Cir. 1997) .....	16
<i>United States v. Olivera-Mendez</i> , 484 F.3d 505 (8th Cir. 2007) .....	20
<i>United States v. Robinson</i> , 414 U.S. 218 (1973) .....	21
<i>United States v. Sanders</i> , 510 F.3d 788 (8th Cir. 2007), <i>cert. denied</i> , 128 S.Ct. 2072 (2008) .....	16
<i>United States v. Singh</i> , 415 F.3d 288 (2nd Cir. 2005) .....	20

<i>United States v. Soriano-Jarquin</i> , 492 F.3d 495 (4 <sup>th</sup> Cir. 2007) .....	20
<i>United States v. Stewart</i> , 473 F.3d 1265 (10 <sup>th</sup> Cir. 2007) .....	20
<i>United States v. Williams</i> , 419 F.3d 1029 (9 <sup>th</sup> Cir. 2005) .....	16

#### STATE CASES

<i>Carter v. State</i> , 494 S.E.2d 108 (Ga. Ct. App. 1997) .....	16
<i>Harris v. Commonwealth</i> , 500 S.E.2d 257 (Va. Ct. App. 1998) .....	17
<i>People v. Forbes</i> , 728 N.Y.S.2d 64 (2001) .....	17
<i>People v. Harris</i> , 886 N.E.2d 947 (Ill. 2008) .....	20
<i>People v. Hoyos</i> , 162 P.2d 528 (Cal. 2007) .....	18
<i>State v. Baker</i> , 2008 UT App 115, 182 P.3d 935 .....	19, 20, 21
<i>State v. Brake</i> , 2004 UT 95, 103 P.3d 699 .....	2
<i>State v. Hansen</i> , 2002 UT 125, 63 P.3d 650 .....	20
<i>State v. Harmon</i> , 910 P.2d 1196 (Utah 1995) .....	18, 19
<i>State v. Hodges</i> , 631 N.W.2d 206 (S.D. 2001) .....	17
<i>State v. James</i> , 2000 UT 80, 13 P.3d 576 .....	19
<i>State v. Krukowski</i> , 2004 UT 94, 100 P.3d 1222 .....	1
<i>State v. Lopez</i> , 873 P.2d 1127 (Utah 1994) .....	19
<i>State v. Maycock</i> , 947 P.2d 695 (Utah Ct. App. 1997) .....	6
<i>State v. Roberts</i> , 943 P.2d 1249 (Mont. 1997) .....	17
<i>State v. Shearin</i> , 612 S.E.2d 371 (N.C. Ct. App. 2005) .....	17
<i>State v. Shepherd</i> , 955 P.2d 352 (Utah Ct. App. 1998) .....	6

<i>State v. Topanotes</i> , 2003 UT 30, 76 P.3d 1159 .....	9
<i>State v. Warren</i> , 2003 UT 36, 78 P.3d 590 .....	11
<i>State v. Webster</i> , 824 P.2d 768 (Ariz. Ct. App. 1991) .....	16
<i>State v. Wilkinson</i> , 2008 UT App 395, 616 Utah Adv. Rep. 16 .....	10
<i>Wilson v. State</i> , 734 So.2d 1107 (Fla. Dist. Ct. App. 1999), <i>cert. denied</i> , 529 U.S. 1124 (2000) .....	18

#### STATE STATUTES

Utah Code Ann. § 58-37a-5a (West 2004) .....	2
Utah Code Ann. § 78A-4-103 (West 2008) .....	1

#### OTHER WORKS CITED

Wayne R. LaFave, <i>Search &amp; Seizure</i> §9.6(a) (4 <sup>th</sup> ed. 2004) .....	17, 19
---	--------

Case No. 20080037-SC

---

IN THE  
UTAH SUPREME COURT

---

State of Utah,  
Plaintiff / Appellee,

vs.

Bradford Dale Gettling,  
Defendant/ Appellant.

---

Brief of Appellee

---

STATEMENT OF JURISDICTION

Defendant appeals from a conviction for possession of methamphetamine, a third degree felony. This Court has jurisdiction under UTAH CODE ANN. § 78A-4-103(2)(e) (West 2008).

STATEMENT OF THE ISSUE

Are passengers reasonably detained incident to a traffic stop until all the lawful objectives of the stop are completed, including searching the passenger compartment incident to the driver's arrest?

*Standard of Review.* This Court reviews for clear error the factual findings underlying a trial court's decision to grant or deny a motion to suppress. *State v. Krukowski*, 2004 UT 94, ¶ 11, 100 P.3d 1222. The trial court's legal conclusions are



reviewed non-deferentially for correctness, including its application of the legal standard to the facts. *State v. Brake*, 2004 UT 95, ¶ 11, 103 P.3d 699.

## CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

U.S. CONST. Amend. IV:

The right of the people to be secure in the their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## STATEMENT OF THE CASE

**Charge.** Defendant was charged with possession of a methamphetamine in a drug-free zone, a second degree felony, in violation of UTAH CODE ANN. § 58-37-8(2)(a)(i) (West 2004), and possession of drug paraphernalia in a drug-free zone, a class A misdemeanor, in violation of UTAH CODE ANN. § 58-37a-5a (West 2004). R4.

**Motion to suppress denied.** Defendant moved to suppress the drug evidence discovered pursuant to a warrantless search of his glasses case, asserting that he was detained without reasonable suspicion. R41-37. The trial court denied the motion. R82-87 (a copy of the Ruling and Order on Defendant's Motion to Suppress is attached in addendum A).

**Plea bargain and conditional guilty plea.** Defendant entered a conditional guilty plea to a reduced charge of possession of methamphetamine, a third degree felony, and the misdemeanor paraphernalia charge was dismissed. R197:3-7.

**Sentence.** The trial court imposed an indeterminate prison term of from zero-to-five years. R179. The trial court then suspended the prison term and placed defendant on a thirty-six month term of probation. R179-78.

**Timely appeal.** Defendant filed a timely notice of appeal. R193.

**Certification to this Court.** “Based on the affirmative vote of at least four judges of the Utah Court of Appeals,” and “the similarity of this case to *State v. Baker*, 20090351-SC,” the court of appeals granted “the parties’ stipulated suggestion to certify this case ‘for immediate transfer to [this Court] for determination.’” Order of Certification, dated 20 October 2008 (quoting Utah R. App. 43(a)) (a copy is contained in addendum C).

#### STATEMENT OF THE FACTS

Deputy Radmall, a canine handler for the Utah County Sheriff’s Department, was the only witness at the preliminary hearing. R194:3, 6 (a copy of the preliminary hearing transcript is attached in addendum B). Based on the deputy’s testimony, the trial court entered the following findings of fact in support of its ruling denying defendant’s motion to suppress:

1. On January 2, 2006, Deputy Shawn Radmall of the Utah County Sheriff's Office was on patrol on Geneva Road in Provo when he observed a vehicle crossing left of center. The Officer suspected a possible DUI and followed the vehicle along Geneva Road into Orem and onto 1300 South.
2. Deputy Radmall observed several violations before performing a traffic stop. The driver of the vehicle was a Mr. Steven Canals. The officer observed two passengers in the car. The passenger in the front passenger seat, Amber Childs . . . , was the owner of the vehicle. The passenger seated directly behind the driver was the [d]efendant[.]
3. Deputy Radmall ran a license and warrant check on the driver. After discovering that the driver had outstanding warrants and a suspended license, Deputy Radmall arrested Mr. Canals.
4. Deputy Radmall then questioned the two passengers of the stopped vehicle to determine if either had a valid driver's license. Both responded that they did not.
5. Deputy Radmall informed the passengers that he was going to perform a canine search of the vehicle incident to the driver's arrest. According to the officer, the backseat passenger [defendant], appeared to be nervous at this statement.
6. As Deputy Radmall placed the driver in the deputy's police vehicle, he observed what he believed were furtive movements by [defendant] in the backseat of the stopped vehicle.<sup>[1]</sup>
7. Deputy Radmall informed [defendant] and Ms. Childs that he intended to run his dog around the vehicle in order to perform a free air search of the vehicle. Ms. Childs advised him that she

---

<sup>1</sup> Specifically, Deputy Radmall saw defendant "leaning over to the passengers' side of the vehicle. His hands were down, and possibly he was looking at something. [The deputy] was just concerned that there may be a weapon or something in the vehicle [defendant] was trying to get to." R194:24-25.

was fine with the exterior search of the vehicle. Deputy Radmall asked [defendant] and Ms. Childs to exit the vehicle while he performed a canine search of the exterior of the vehicle. After performing a brief *Terry* frisk, he asked them to stand by a backup officer from Utah Valley State College . . . Deputy Radmall subjectively believed, but did not express his belief to the two passengers that they were not free to leave.

8. During the canine search, Deputy Radmall's canine indicated positive for the presence of narcotics in the vehicle on the passenger's side rear door handle.<sup>[2]</sup>
9. Deputy Radmall informed the front seat passenger and owner of the car, Amber Childs of the dog's positive indications. Ms. Childs agreed to his request that the dog search the interior of the vehicle. Ms. Childs stated that she did not believe that any drugs were in her car.
10. Once inside the car, the dog indicated positive for the presence of narcotics somewhere in the backseat of the car. Deputy Radmall removed luggage from the backseat to expose a hard glasses case that was underneath the luggage. Upon opening the case, Deputy Radmall discovered drug paraphernalia (a spoon, some straws, a glass pipe) and methamphetamine inside.
11. Deputy Radmall informed the three occupants of the vehicle of his findings. Ms. Childs and Mr. Canals both denied owning the drugs and related paraphernalia.
12. After Ms. Childs' denied ownership, [defendant] looked at Deputy Radmall, nodded his head and said: "Don't make me tell you. Don't make me say it."
13. [Defendant] requested that Deputy Radmall retrieve several items from the luggage and give them to Ms. Childs.

---

<sup>2</sup> Deputy Radmall's canine "indicated" on the car's exterior approximately one and a half minutes after Childs and defendant were asked out of it. R194:23.

[Defendant] advised the officer that he was transient and “that was all of his stuff.”

R82-79.

Based on these findings, the trial court ruled that (1) defendant had no expectation of privacy in Childs’ vehicle and could not therefore challenge the search of the passenger compartment; (2) defendant had an expectation of privacy in the glasses case found in the backseat of Childs’s vehicle and could therefore challenge the search of that container; (3) the search of the glasses case was justified by probable cause to believe that it contained drugs based on the canine’s positive indication and defendant’s furtive gestures; and (4) defendant’s status had no bearing on the lawfulness of the searches. R75-74 (citing *State v. Maycock*, 947 P.2d 695 (Utah Ct. App. 1997); *State v. Shepherd*, 955 P.2d 352, 356 (Utah Ct. App. 1998) and *Maryland v. Wilson*, 519 U.S. 408 (1997)). Because the trial court viewed the “status of [defendant] during the search of the vehicle and glasses case” as irrelevant,” the trial court “[did] not make a finding as to whether [defendant] was unlawfully detained” at the time. R73.

## SUMMARY OF THE ARGUMENT

Defendant's sole challenge to the admission of the drug evidence here is that he was unreasonably detained during the traffic stop. Defendant, one of two passengers in a vehicle stopped for traffic violations, claims that he should have been free to go once the driver was arrested on outstanding warrants. Defendant posits that he was detained unreasonably when officers thereafter searched the passenger compartment, including a glasses case found in the backseat, and discovered the methamphetamine at issue.

The trial court declined to make a finding regarding whether defendant was detained at the time of the search, deeming it sufficient that the search of the glasses case was justified by probable cause. The State agrees with defendant that he was seized when the search of the glasses case occurred, but disagrees that his seizure was unreasonable. Rather, defendant's seizure was reasonable because passengers are lawfully detained incident to a traffic stop until all the lawful objectives of the stop are completed, including searching the passenger compartment incident to the driver's arrest. This Court should affirm the trial court's ruling on this alternative ground.

Indeed, since the trial court ruled in this matter, the United States Supreme Court has clarified that passengers are reasonably seized incident to a traffic

stop. The Supreme Court did not address the question of how long a passenger remains reasonably seized, or whether officers may continue to detain passengers while they search the passenger compartment incident to a driver's arrest. But that Court's Fourth Amendment jurisprudence, with its emphasis on officer safety, makes clear that the risk of harm to both officers and vehicle occupants is minimized if officers routinely exercise unquestioned command during a traffic stop.

#### ARGUMENT

PASSENGERS ARE REASONABLY DETAINED INCIDENT TO A TRAFFIC STOP UNTIL ALL THE LAWFUL OBJECTIVES OF THE STOP ARE COMPLETED, INCLUDING SEARCHING THE PASSENGER COMPARTMENT INCIDENT TO THE DRIVER'S ARREST

Defendant acknowledges that as a passenger, he was "lawfully seized pursuant to a legal traffic stop" of the driver. Aplt. Br. at 7-8 (citing *Brendlin v. California*, 127 S.Ct. 2400 (2007)). However, defendant asserts that where, as here, the stop results in the driver's arrest, the officer may not continue to detain passengers once the driver is arrested. Aplt. Br. at 8. According to defendant, continued detention of passengers is justified only upon a showing of reasonable suspicion that they are engaged in criminal activity, or that they may be armed and dangerous. *Id.*

The trial court declined to make any finding regarding defendant's status during the traffic stop, deeming it sufficient that the search of defendant's glasses case was justified by probable cause. Assuming arguendo that the trial court erred in declining to find whether defendant was seized incident to the traffic stop, its ruling admitting the drug evidence may be upheld on any alternative ground that is "'apparent on the record'" and "sustainable by the factual findings of the trial court." *State v. Topanotes*, 2003 UT 30, ¶ 9, 76 P.3d 1159 (quoting *Bailey v. Bayles*, 2002 UT 58, ¶ 10, 52 P.3d 1158). As will be shown, the trial court's ruling may be upheld here on the alternative ground that passengers are reasonably detained incident to a traffic arrest until all the lawful objectives are completed, including searching the passenger compartment, even absent independent reasonable suspicion.<sup>3</sup>

As recently recognized by the United States Supreme Court "[i]t is reasonable for passengers to expect that a police officer at the scene of a crime, arrest, or investigation will not let people move around in ways that could jeopardize his safety." *California v. Brendlin*, 127 S.Ct. 2400, 2407 (2007); accord *State v. Wilkinson*,

---

<sup>3</sup> This issue is the same as one of the issues the Court granted certiorari to decide in *State v. Baker*, Case No. 20080351-SC. See Order, 11 July 2008 (a copy is attached in addendum D). The State's Reply Brief of Petitioner in *Baker* was filed on 22 December 2008. Because both *Baker* and this case involve the same issue they should be heard on the same oral argument calendar.



2008 UT App 395, ¶ 11 n.4, 616 Utah Adv. Rep. 16 (recognizing Wilkinson “was in fact detained for officers to investigate [the driver’s] traffic violations”). While the United States Supreme Court recognizes that passengers are reasonably detained incident to a traffic stop, that Court has yet to specifically address the issue of how long passengers may be so detained. *See Maryland v. Wilson*, 519 U.S. 408, 415 n.3 (1997). The Supreme Court’s clear concern for officer safety, however, expressed most recently in *Brendlin*, supports the view that passengers are reasonably detained until all the lawful objectives of the traffic stop are completed. 127 S.Ct. 2400, 2407. And for good reason. It is “too plain for argument” that the public’s interest in officer safety “is both legitimate and weighty.” *Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977); *see also Wilson*, 519 U.S. at 413 (noting “weighty interest in officer safety”).

The important interest in officer safety is of special significance here because “traffic stops may be dangerous encounters.” *Wilson*, 519 U.S. at 413; *see also Michigan v. Long*, 463 U.S. 1032, 1049 (1983) (recognizing “roadside encounters between police and suspects are especially hazardous”); *Foley v. Connelie*, 435 U.S. 291, 298 (1978) (noting “number of police officers wounded or killed in the process of making inquiry in borderline, seemingly minor violation situations” involving traffic infractions); *Mimms*, 434 U.S. at 110 (acknowledging “inordinate risk

confronting an officer as he approaches a person seated in an automobile”); accord *State v. Warren*, 2003 UT 36, ¶¶ 23-29, 78 P.3d 590. This is particularly true when passengers are involved. See *Wilson*, 519 U.S. at 413 (recognizing “fact that there is more than one occupant of the vehicle increases the possible sources of harm to the officer”); see also *id.* at 414 (same). United States Supreme Court precedent thus makes clear that officers conducting a traffic stop must be allowed to control the situation. As noted, *Brendlin* holds that passengers are reasonably seized incident to a traffic stop. 127 S.Ct. 2400, 2407 (2007). And *Wilson* holds that the rule of *Mimms*—that a driver may be ordered to exit a lawfully stopped vehicle—includes passengers. *Wilson*, 519 U.S. at 413-15. Significantly, the Supreme Court observed in *Wilson*, that *Michigan v. Summers*, 452 U.S. 692 (1981), though not a traffic stop case, “offers guidance by analogy.” *Wilson*, 519 U.S. at 414.

In *Summers*, “as . . . police officers were about to execute a warrant to search a house for narcotics, they encountered [Summers] descending the front steps.” 452 U.S. at 693. At the officers’ request, Summers assisted them in gaining entry. *Id.* He was thereafter detained while the officers searched the house. *Id.* The Supreme Court noted that “[t]he question in [Summers] depended ‘upon a determination whether the officers had the authority to require [Summers] to re-enter the house and to remain there while they conducted their search.’” *Wilson*, 519 U.S. at 414

(quoting *Summers*, 452 U.S. at 695). The Supreme Court also noted that “no special danger to the police [officers] [was] suggested by the evidence in [the *Summers*] record,” but emphasized that “the execution of a warrant to search for narcotics is the kind of transaction that may give rise to sudden violence or frantic efforts to conceal or destroy evidence.” *Id.* (quoting *Summers*, 452 U.S. at 702). Analogizing to *Summers* in *Wilson*, the Supreme Court observed that traffic stops are also dangerous business. *Wilson*, 519 U.S. at 413-14. Thus, the Supreme Court held in *Wilson*, as it had in *Summers*, that the “[t]he risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation.” *Id.* (quoting *Summers*, 452 U.S. at 703).

The Supreme Court’s reliance on *Summers* in passenger detention cases like *Wilson* and *Brendlin* is instructive. Read together, these cases support the principle that police officers may detain persons that they encounter in premises they are lawfully entitled to search, until the search is completed. Indeed, as recognized in *Brendlin*, these cases “reflect[ ] a societal expectation of ‘unquestioned [police officer] command’” during a traffic stop. *Id.* at 2407 (discussing *Wilson*, *Mimms*, and *Summers*, 452 U.S. 692) (brackets in original).

The officer safety concerns underlying the Supreme Court’s Fourth Amendment jurisprudence in cases like *Mimms* and *Wilson* remain compelling

today. In *Mimms*, the Supreme Court relied on a 1963 study showing that “approximately 30% of police shootings occurred when a police officer approached a suspect seated in an automobile.” *Mimms*, 434 U.S. at 110 (citation omitted). In *Wilson*, the Supreme Court relied on 1994 statistics demonstrating that in that year 5,762 officers were assaulted and eleven were killed during traffic pursuits and stops. *See* 519 U.S. at 413.

In the years since these cases were decided, the statistics on which the Supreme Court relied have remained consistent. The most recent data reveals that in 2007, 6,424 officers were assaulted and eleven were killed during traffic pursuits or stops. *See* Federal Bureau of Investigation, *Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted*, Tables 19 & 68 (2007) (“Uniform Crime Reports”) (found at [http://www.fbi.gov/ucr/killed/2007/data/table\\_19.html](http://www.fbi.gov/ucr/killed/2007/data/table_19.html) & [http://www.fbi.gov/ucr/killed/2007/data/table\\_68.html](http://www.fbi.gov/ucr/killed/2007/data/table_68.html)). Over 39% of those assaults involved a dangerous weapon such as a gun or knife. *See Uniform Crime Reports*, Table 73 (found at [http://www.fbi.gov/ucr/killed/2007/data/table\\_73.html](http://www.fbi.gov/ucr/killed/2007/data/table_73.html)). One of the murdered officers was killed while searching the offender’s vehicle. *See Uniform Crime Reports*, Table 24 ([http://www.fbi.gov/ucr/killed/2007/data/table\\_24.html](http://www.fbi.gov/ucr/killed/2007/data/table_24.html)). Utah law enforcement officers are not immune from this danger. *See* Sara Israelsen-Hartley, *Lehi Officer*

*shot: Police kill woman who opened fire*, Deseret News, 24 June 2008, and Melinda Rogers and Nate Carlisle, *Woman killed after shooting Lehi cop had history of mental illness*, The Salt Lake Tribune, 24 June 2008 (copies of both articles are attached in addendum E).

Given the above, concerns about officer safety during traffic stops are indeed weighty. Years of data establish the extreme danger that guns, knives, and other easily concealed weapons pose to officers making traffic stops, which danger is only increased when passengers are also present. Therefore, a rule permitting officers to detain passengers until the lawful objectives of the stop are completed, including searching the passenger compartment incident to the driver's arrest, serves a vital public purpose.

It is also eminently reasonable. "The touchstone of [any] analysis under the Fourth Amendment is always 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.'" *Mimms*, 434 U.S. at 108-09 (quoting *Terry v. Ohio*, 392 U.S. 1, 19 (1964)). Reasonableness in this context "depends 'on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers.'" *Mimms*, 434 U.S. at 109 (quoting *United States v. Brignoni-Ponce*, 422 U.S. at 873, 878 (1975)); see also *Wilson*, 519 U.S. at 411. Turning from officer safety to the personal liberty

side of the ledger, “the case for passengers is in one sense stronger than that for the driver.” 519 U.S. at 413. For example, “[t]here is probable cause to believe that the driver has committed a minor vehicular offense, but there is no such reason to stop or detain the passengers.” *Id.* But as recognized in *Wilson*, “the additional intrusion on the passenger is minimal,” *id.* at 415, because “as a practical matter, the passengers are already stopped by virtue of the stop of the vehicle.” *Id.* at 413. Moreover, “the possibility of a violent encounter stems not from the ordinary reaction of a motorist stopped for a speeding violation, but from the fact that evidence of a more serious crime might be uncovered during the stop.” *Id.* at 414. Passengers will thus be “every bit” as motivated as drivers “to employ violence to prevent apprehension of such a crime.” *Id.* Finally, the Fourth Amendment does not “require that police officers take unnecessary risks in the performance of their duties.” *Mimms*, 434 U.S. at 110. Accordingly, a rule allowing officers to detain passengers until the passenger compartment is safely searched incident to the driver’s arrest reasonably minimizes the risk of harm to both officers and vehicle occupants.

While the Supreme Court declined to decide in *Wilson* whether “an officer may forcibly detain a passenger for the entire duration of the stop,” 519 U.S. at 415 n.3, a majority of jurisdictions have since read *Wilson* to mean that those

same safety concerns that justify police in ordering passengers out of a stopped vehicle also justify police in ordering passengers to remain in the vehicle during a traffic stop.<sup>4</sup> See, e.g., *United States v. Sanders*, 510 F.3d 788, 791 (8th Cir. 2007) (holding officer's safety concerns far outweighed minimal intrusion of ordering passenger Sanders back into vehicle), *cert. denied*, 128 S.Ct. 2072 (2008); *United States v. Williams*, 419 F.3d 1029, 1034 (9th Cir. 2005) (recognizing officers' "need . . . to exercise control over individuals encountered during a traffic stop" justified ordering "passenger back into an automobile that he voluntarily exited"), *cert. denied*, 546 U.S. 1081 (2005); *Rogala v. District of Columbia*, 161 F.3d 44, 53 (D.C. Cir. 1998) (recognizing "a police officer has the power to reasonably control the situation by requiring a passenger to remain *in* a vehicle during a traffic stop") (emphasis in original); *United States v. Moorefield*, 111 F.3d 10, 12-13 (3rd Cir. 1997) (affirming "police officers lawfully ordered passenger Moorefield to remain in the car and put his hands in the air while the traffic stop was being conducted"); *Carter v. State*, 494 S.E.2d 108, 109-110 (Ga. Ct. App. 1997) (recognizing passenger's "det[ention] . . . while the officer completes the traffic

---

<sup>4</sup> Even before *Wilson*, at least one state court had extended *Mimms* to passengers, including law enforcement authority to order passengers "back inside the vehicle for safety purposes." *State v. Webster*, 824 P.2d 768, 770 (Ariz. Ct. App. 1991).

stop” “ is a minimal intrusion”); *State v. Roberts*, 943 P.2d 1249, 1251 (Mont. 1997) (holding “Roberts was not unlawfully detained when Officer Punt directed him to remain in the vehicle”); *People v. Forbes*, 728 N.Y.S.2d 64, 66 (2001) (holding “it is within the discretion of the police officers on the scene to decide whether . . . to maintain the status quo by requiring the driver and passengers to remain in the vehicle until the traffic stop is over”); *State v. Shearin*, 612 S.E.2d 371, 378 (N.C. Ct. App. 2005) (recognizing “it is reasonable for an officer to decide that it is safer to have an occupant of a vehicle remain temporarily in the vehicle for the short duration of a lawful traffic stop”); *State v. Hodges*, 631 N.W.2d 206, 210 & n.1 (S.D. 2001) (recognizing “[f]or officer safety, it is reasonable to require the passengers in a lawfully stopped vehicle to remain at the scene until officer is able to assess the situation”); *Harris v. Commonwealth*, 500 S.E.2d 257, 261 (Va. Ct. App. 1998) (recognizing “the Fourth Amendment permits the police to order the passengers to get out of the car pending the completion of the stop”). *See also* Wayne R. LaFave, *Search & Seizure* §9.6(a), at 647 (4th ed. 2004) (“Common sense suggests that, in the ordinary traffic stop situation, the officer is much better off (from the standpoint of ensuring against a surprise attack by a passenger) if the passengers remain in the stopped vehicle while the citation is prepared and other



procedures incident to the stop are carried out"). *But see Wilson v. State*, 734 So.2d 1107, 1113 (Fla. Dist. Ct. App. 1999), *cert. denied*, 529 U.S. 1124 (2000).

None of the above cases involves a situation exactly like that in this case, however, where officers are authorized to search the passenger compartment incident to the driver's arrest. *See, e.g., New York v. Belton*, 453 U.S. 454, 460 (1981); *accord State v. Harmon*, 910 P.2d 1196, 1203 (Utah 1995) (recognizing *Belton* authorizes officers to search arrested person and "his or her vehicle"). However, the California Supreme Court recently upheld the detention of a driver *and* a passenger for purposes of performing an inventory search. *See People v. Hoyos*, 162 P.2d 528, 546 (Cal. 2007) (holding driver and passenger were reasonably seized following *Mimms/Wilson* order to exit vehicle for "at least as long as reasonably necessary for the officer to complete the activity the *Mimms/Wilson* order contemplates"). The officer safety concerns undergirding *Hoyos* and the other cases cited above strongly support a rule allowing officers to detain passengers until all the lawful objectives of a traffic stop completed, including searching the passenger compartment incident to the driver's arrest. As reiterated by the Supreme Court in *Brendlin*, "[t]he risk of harm to both the police and the occupants is minimized if the officers routinely exercise

unquestioned command of the situation.’” 127 S.Ct. at 2407 ((quoting *Wilson*, 519 U.S. at 414) (in turn quoting *Summers*, 452 U.S. at 702-03)).

Nevertheless, the court of appeals recently held in *Baker*, that “from the moment the driver was placed under arrest” in that case, there was “no lawful reason why the passengers were detained.” *State v. Baker*, 2008 UT App 115, ¶ 12, 182 P.3d 935; *see also id.* at ¶¶ 10-11 (citing *Brendlin* and *State v. James*, 2000 UT 80, ¶ 10, 13 P.3d 576). The court of appeals is mistaken. The court of appeals’ mistake stems from its failure to recognize that the lawful objectives of the stop in *Baker* were not completed with the driver’s arrest. Indeed, where, as in *Baker* and this case, officers develop probable cause to arrest the driver, the lawful purposes of the stop evolve to include safely searching the passenger compartment. *See Belton*, 453 U.S. at 460; *Harmon*, 910 P.2d at 1203.

Of course, a “detention [incident to a traffic stop]’ must be temporary and last no longer than is necessary to effectuate the purpose of the stop.’” *State v. Lopez*, 873 P.2d 1127, 1132 (Utah 1994) (quoting *Florida v. Royer*, 460 U.S. 491, 500 (1983), and *Terry*, 392 U.S. at 19-20); *see also Illinois v. Caballes*, 543 U.S. 405, 507 (2005) (holding suspicionless canine sniff during routine traffic stop was reasonable where it did not prolong stop beyond time reasonably required to complete it); *Meuhler v. Mena*, 544 U.S. 93, 101 (2005) (applying *Caballes* and holding officers may ask unrelated

questions, so long as questions to not prolong detention).<sup>5</sup> Moreover, “[o]nce the purpose of the initial stop is concluded, . . . the person must be allowed to depart,” “*unless an officer has probable cause or a reasonable suspicion of a further illegality.*” *State v. Hansen*, 2002 UT 125, ¶ 31, 63 P.3d 650 (emphasis added).

Here, and in *Baker*, officers immediately developed probable cause of a further illegality: both drivers were driving on suspension, and the instant driver also had outstanding warrants. R81; *see also Baker*, 2008 UT App 115, ¶ 3. Thus, “further temporary detention” of passengers in both cases—incident to the drivers’ arrests and ensuing passenger compartment searches—was justified by probable cause. *Hansen*, 2002 UT 125, ¶ 31; *see also Wilson*, 419 at 414. It reasonably follows that officers in these circumstances maintain “unquestioned command” of the traffic stop to ensure his or her safety. *Wilson*, 519 U.S. at 414 (case citation and quotation marks omitted). Indeed, the risk to officer safety only increases once an arrest is

---

<sup>5</sup> Although *Muehler* involves the detention of a home’s occupants while the premises were searched pursuant to a warrant, courts have universally recognized that *Muehler* is equally applicable to traffic stops. *See, e.g., United States v. Soriano-Jarquin*, 492 F.3d 495, 501 (4th Cir. 2007); *United States v. Olivera-Mendez*, 484 F.3d 505, 510 (8th Cir. 2007); *United States v. Mendez*, 476 F.3d 1077, 1080 (9th Cir. 2007); *United States v. Stewart*, 473 F.3d 1265, 1269 (10th Cir. 2007); *United States v. Hernandez*, 418 F.3d 1206, 1209 n.3 (11th Cir. 2005); *United States v. Singh*, 415 F.3d 288, 294 (2nd Cir. 2005); *see also People v. Harris*, 886 N.E.2d 947, 960-961 (Ill. 2008) (collecting cases).

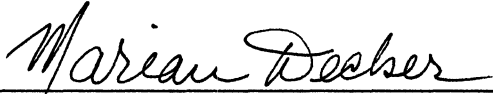
initiated. See *United States v. Robinson*, 414 U.S. 218, 234-35 (1973) (recognizing “danger to an officer is far greater in the case of the extended exposure which follows the taking of a suspect into custody and transporting him to the police station than in the case of the relatively fleeting contact resulting from the typical *Terry*-type stop”); accord *Knowles v. Iowa*, 525 U.S. 113, 117 (1998). As noted, the increased potential for danger encompasses passengers. *Wilson*, 519 U.S. at 413-14. When officers prepare to search a car incident to the driver’s arrest, “the motivation of a passenger to employ violence to prevent apprehension of . . . a crime is every bit as great as that of the driver.” *Id.* at 414; see also *Maryland v. Pringle*, 540 U.S. 366, 373 (2003) (noting passengers “will often be engaged in a common enterprise with the driver, and have the same interest in concealing the fruits or the evidence of their wrongdoing” (case citation and quotation marks omitted)). Therefore, the court of appeals’ holding, that passengers are unreasonably detained once the driver is formally arrested, *Baker*, see 2008 UT App 115, ¶ 12, regardless of whether all lawful objectives have been completed, can only make an already dangerous situation more dangerous. The Fourth Amendment does not require this.

## CONCLUSION

For the foregoing reasons, the Court should affirm the trial court's ruling admitting the drug evidence.

Respectfully submitted 19 January 2009.

MARK L. SHURTLEFF  
Utah Attorney General

  
\_\_\_\_\_  
MARIAN DECKER  
Assistant Attorney General  
Counsel for Appellee

## CERTIFICATE OF SERVICE

I certify that on January 22, 2009, two copies of the foregoing brief were

☒ mailed ☐ hand-delivered to:

MARGARET P. LINDSAY  
775 W. Center Street  
P.O. Box 1058  
Spanish Fork, Utah 84660

A digital copy of the brief was also included: ☒ Yes ☐ No

  
\_\_\_\_\_

## Addenda

## Addendum A

IN THE FOURTH JUDICIAL DISTRICT COURT  
UTAH COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

BRADFORD DALE GETTLING,

Defendant.

**RULING & ORDER ON DEFENDANT'S  
MOTION TO SUPPRESS**

Case No. 061400084

Judge Lynn W. Davis

This matter comes before the Court on Defendant's Motion to Suppress. The Court having carefully considered and reviewed the file in this matter, the memoranda submitted by the parties, having heard oral arguments, reviewed the submitted memoranda, and good cause appearing therefore, the Court enters the following Ruling.

**I**

**FINDINGS OF FACT & PROCEDURAL HISTORY**

1. On January 2, 2006, Deputy Shawn Radmall of the Utah County Sheriff's Office was on patrol on Geneva Road in Provo when he observed a vehicle crossing left of center. The



Officer suspected a possible DUI and followed the vehicle along Geneva Road into Orem and onto 1300 South.

2. Deputy Radmall observed several violations before performing a traffic stop. The driver of the vehicle was a Mr. Steven Canals. The officer observed two passengers in the car. The passenger in the front passenger seat, Amber Childs ("Miss Childs"), was the owner of the vehicle. The passenger seated directly behind the driver was the Defendant, Bradford Dale Gettling ("Mr. Gettling").
3. Deputy Radmall ran a license and warrant check on the driver. After discovering that the driver had outstanding warrants and a suspended license, Deputy Radmall arrested Mr. Canals.
4. Deputy Radmall then questioned the two passengers of the stopped vehicle to determine if either had a valid driver license. Both responded that they did not.
5. Deputy Radmall informed the passengers that he was going to perform a canine search of the vehicle incident to the driver's arrest. According to the officer, the backseat passenger, Mr. Gettling appeared to be nervous at this statement.
6. As Deputy Radmall placed the driver in the deputy's police vehicle, he observed what he believed were furtive movements by Mr. Gettling in the backseat of the stopped vehicle.
7. Deputy Radmall informed Mr. Gettling and Ms. Childs that he intended to run his dog

around the vehicle in order to perform a free air search of the vehicle. Ms. Childs advised him that she was fine with the exterior search of the vehicle. Deputy Radmall asked Mr. Gettling and Ms. Childs to exit the vehicle while he performed a canine search of the exterior of the vehicle. After performing a brief Terry Frisk, he asked them to stand by a backup officer from Utah Valley State College ("UVSC"). Deputy Radmall subjectively believed, but did not express his belief to the two passengers that they were not free to leave.

8. During the canine search, Deputy Radmall's canine indicated positive for the presence of narcotics in the vehicle on the passenger's side rear door handle.
9. Deputy Radmall informed the front seat passenger and owner of the car, Amber Childs of the dog's positive indications. Ms. Childs agreed to his request that the dog search the interior of the vehicle. Ms. Childs stated that she did not believe that any drugs were in her car.
10. Once inside the car, the dog indicated positive for the presence of narcotics somewhere in the backseat of the car. Deputy Radmall removed luggage from the backseat to expose a hard glasses case that was underneath the luggage. Upon opening the case, Deputy Radmall discovered drug paraphernalia (a spoon, some straws, a glass pipe) and methamphetamine inside.

11. Deputy Radmall informed the three occupants of the vehicle of his findings. Ms. Childs and Mr. Canals both denied owning the drugs and related paraphernalia.
12. After Ms. Childs' denied ownership, Mr. Gettling looked at Deputy Radmall, nodded his head and said: "Don't make me tell you. Don't make me say it."
13. Mr. Gettling requested that Deputy Radmall retrieve several items from the luggage and give them to Ms. Childs. Mr. Gettling advised the officer that he was transient and "that was all of his stuff."
14. Mr. Gettling filed his Motion to Suppress on May 24, 2006.
15. The State filed its Response on June 30, 2006.
16. The Defendant filed his Reply Memorandum in Support of Motion to Suppress on July 13, 2006.
17. The Court heard arguments on the matter on August 9, 2006.

## **II**

### **ANALYSIS & RULING**

The issues before the Court are: (1) does a passenger in a vehicle have standing to assert a claim that his Fourth Amendment right against search and seizure has been violated; (2) if a passenger does have standing, is he unlawfully detained during the search; and (3) will evidence discovered during the search be suppressed. The Defendant asks the Court to suppress the

evidence of Methamphetamines and Drug Paraphernalia on the basis that Deputy Radmall unlawfully extended the scope of the Defendant's detention. Specifically, the Defendant argues that Deputy Radmall had completed his traffic stop, arrested the driver of the vehicle on a warrants check, returned to the vehicle without suspicion of criminal activity, and asked Defendant, a passenger in the vehicle, to exit the vehicle while Deputy Radmall improperly ran a canine unit around the vehicle. The Defendant argues that any evidence obtained from the canine search is a result of an illegal detention of Defendant and should be suppressed.

#### **A. Standing**

The Fourth Amendment guarantees "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. CONST. AMEND. IV. Before asserting a violation of Fourth Amendment rights, a defendant must first establish that he has standing in item of place searched. State v. Bisseger, 76 P.3d 178, 181 (Utah Ct. App. 2003)(overruled on other grounds). It is important to note that the rights guaranteed by the Fourth Amendment "are personal in nature and may not be vicariously asserted." Rakas v. Illinois, 439 U.S. 128, 133-34 (1978); Bisseger, 76 P.3d at 181; State v. Scott, 860 P.2d 1006 (1993). A defendant challenging the validity of a search must establish that he possessed a reasonable "legitimate expectation of privacy in the invaded space." Bisseger, 76 P.3d at 181

(internal citations omitted). A defendant bears the burden of proving his standing. Scott, 860 P.2d at 1007.

In determining whether a defendant has a legitimate expectation of privacy in the area and belongings searched, the Court employs a two-part test. Bisseger, 76 P.3d at 181. First, the defendant must show that he had “a subjective expectation of privacy in the searched area.” Id.; State v. Sepulveda, 842 P.2d 913, 915 (Utah Ct. App. 1992); Scott, 860 P.2d at 1007. Next, the Court must “determine whether the defendant’s expectation was objectively reasonable . . . [and] whether society is willing to recognize the individual’s expectation of privacy as legitimate.” Id. (internal citations and quotations omitted). Generally, a passenger in the vehicle does not have standing to assert a Fourth Amendment claim unless the passenger has an ownership interest in the vehicle. Rakas, 439 U.S. at 148-49; Bisseger, 76 P.3d at 181-82. Scott, 860 P.2d at 1007. A passenger, however, who has an ownership interest in personal property seized from the car, such as a closed item similar to a purse or luggage, may have standing in that individual item. *See* Bisseger, 76 P.3d at 182.

In Bisseger, the driver consented to the search of the vehicle. 76 P.3d at 180. The officer asked the passenger, who had no ownership interest in the vehicle, to get out of the car. Id. She did so, but left some of her personal belongings in the car including a small opaque lip-balm container. Id. As the officer searched the car, he discovered the

lip-balm container. Id. at 180-81. The officer knew that the container belonged to the passenger and had no individualized probable cause as to the container. Id.

Nevertheless, the officer opened the container without first obtaining permission from the passenger and found methamphetamine inside. Id. In reviewing the passenger's motion to suppress, the Court of Appeals analogized the lip-balm container to a purse, shoulder bag, jacket, or shopping bag and determined that such items are "closed container[s] that keep[] the owner's personal things hidden from public view" and "[b]ecause [the defendant] placed private things in a closed opaque container, [the defendant] had a legitimate expectation of privacy in the contents of the container." Id. at 182. Therefore, while passengers in a vehicle do not have standing to object to a search of the vehicle itself, the passengers will have standing to challenge the search and seizure of their personal property found within the vehicle. Id. A passenger will not have standing if it can be shown that they abandoned the property. State v. Rynhart, 125 P.3d 938 (Utah 2005).

Applying Bisseger to the instant case, the Court finds that the Defendant has standing as to the search of the hard glasses case found as a result of the canine search of the vehicle. The officer discovered the glasses case underneath luggage on the backseat of the vehicle next to where the Defendant was sitting. Officer Radmall opened the case and searched it prior to determining ownership of the case. Similar to the lip-balm

container found in Bisseger, the glasses case was a personal container, it was closed and opaque. At the point of discovery, the officer could not ascertain who owned the glasses case and made no attempt to determine ownership prior to opening it. This Court finds that similar to a purse, jacket, or lip-balm, a glasses case is a personal item in which a person would have a legitimate expectation of privacy.

Although the Defendant has standing as to contest the search of the glasses case, the Defendant does not have standing as to the canine searches of the vehicle. The Defendant did not have or claim any ownership interest in the vehicle. Without any such interest, the Defendant has no standing to contest the vehicle's search. Further, the search was valid as incident to the arrest of the driver and the permission the officer obtained from the other passenger, Amber Childs, who was also the owner of the vehicle.

## **B. Search & Seizure**

As standing has been established, the Court now analyzes the claims forwarded by Defendant in his Motion to Suppress. The Defendant asserts that evidence obtained in the search of the glasses case should be suppressed because (1) the vehicle he was a passenger in was unlawfully searched, (2) the officer improperly required Defendant to

vacate the vehicle, and (3) that the subsequent detainment of the Defendant was unlawfully extended due to the unlawful search of the vehicle.

As noted above, the Court has found that Defendant does not have standing to contest the search of the vehicle. Therefore, any argument that evidence should be suppressed because of an unlawful search of the vehicle is inapplicable to the instant case. Consequently, because the search of the vehicle is not in question, any evidence obtained as a result of the vehicle's search will not be suppressed unless there are other independent grounds requiring their suppression.

As to the search of the glasses case, the Court finds that Deputy Radmall had the requisite probable cause to search the glasses case. When a canine search is performed, a positive indication by a drug-sniffing canine provides the requisite probable cause to search a container. State v. Maycock, 947 P.2d 695 (Utah Ct. App. 1997). Deputy Radmall's canine clearly indicated on the glasses case. This indication, along with the Deputy's previous observations of Defendant's furtive actions when the Defendant was still in the backseat of the car, provided the Deputy with the requisite probable cause to search the glasses case.

A claim of an unlawfully extended detainment of the Defendant, a passenger, has no bearing on the lawfulness of the search of the car and the subsequent search of the glasses case. In State v. Shepard, the Utah Court of Appeals pointed out that "[t]he



United States Supreme Court . . . held that a trooper's asking a passenger to exit the car was not illegal." State v. Shepard, 955 P.2d 352, 356 (Utah Ct. App. 1998); Maryland v. Wilson, 519 U.S. 408 (1997). An officer does not need to observe any threatening behavior from the vehicle's passengers before directing a passenger out of the car. Id.

The Court notes that Mr. Gettling was a passenger in the vehicle. He did not have a driver license on his person, was not the owner of the vehicle, and had no legal ability to move the vehicle from the scene. The Court finds that the officer's request that the Defendant leave the vehicle in order to facilitate a canine search on the car was lawful and proper, particularly in light of Ms. Child's grant of permission. Mr. Gettling was not unlawfully detained as a result of the search of the vehicle. Further, at the time the Deputy searched the glasses case, the Defendant was not in possession of the case and had not claimed ownership to the case. Mr. Gettling cannot claim he was unlawfully detained as a result of an unlawful search of either the vehicle or the glasses case. The Court denies Defendant's Motion to Suppress.

Because the status of the Defendant during the search of the vehicle and glasses case is not relevant, the court does not make a finding as to whether the Defendant was unlawfully detained.

### **III**

## ORDER

On the grounds and for the reasons set forth therein, IT IS HEREBY ORDERED,  
ADJUDGED, AND DECREED that:

1. Defendant's Motion to Suppress is denied.

Signed this 5<sup>TH</sup> day of September, 2006.

  
LYNN W. DAVIS, JUDGE



## Addendum B

FILED

IN THE FOURTH JUDICIAL DISTRICT COURT  
IN AND FOR UTAH COUNTY, STATE OF UTAH

Fourth Judicial District Court  
of Utah County, State of Utah  
2/22/06 Deputy

STATE OF UTAH,

Plaintiff,

VS.

BRADFORD GETTLING

Defendant.

CASE NO. 061400084

BEFORE THE HONORABLE LYNN W. DAVIS

UTAH COUNTY FOURTH DISTRICT COURT

125 North 100 West

Provo, Utah 84606

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PRELIMINARY HEARING

FEBRUARY 15, 2006

ORIGINAL

Reported by: Tasha Taylor, RPR, CSR

FILED  
UTAH APPELLATE COURTS

MAR -4 2008

194

CERTIFIED COURT TRANSCRIPT

A P P E A R A N C E S

FOR THE PLAINTIFF:

JEFFREY BUHMAN  
Deputy Utah County Attorney  
100 East Center, #2100  
Provo, Utah 84606

FOR THE DEFENDANT:

RICHARD GALE  
Utah County Public Defenders  
245 North University Avenue  
Provo, Utah 84601

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**I N D E X**

<u>WITNESS</u>	<u>PAGE NO.</u>
Deputy Shawn Radmall	
Direct Examination by Mr. Buhman .....	5
Cross-Examination by Mr. Gale .....	11
Redirect Examination by Mr. Buhman .....	20
Recross-Examination by Mr. Gale .....	25

**E X H I B I T S**

<u>EXHIBITS</u>	<u>PAGE NO.</u>
Plaintiff's Exhibit No. 1 .....	9

1 Provo, Utah; February 15, 2006

2 P R O C E E D I N G S

3 THE COURT: Let's go on the record. It's Case  
4 No. 106, Bradford Dale Gettling, Case No. 061400084.

5 Mr. Richard Gale is here in behalf of the defendant, who is  
6 present. Mr. Jeff Buhman is here in behalf of the State of  
7 Utah. This matter is set before the Court today for a  
8 preliminary hearing. You may call your first witness,  
9 counsel.

10 MR. BUHMAN: The State calls Deputy Radmall.

11 THE COURT: Come forward and be sworn by the clerk of  
12 the court, please.

13 DEPUTY SHAWN RADMALL

14 Called by the Plaintiff, having been duly  
15 Sworn, was examined and testified as follows:

16 THE CLERK: You do solemnly swear that the testimony  
17 you are about to give in the case now before the Court will be  
18 the truth, the whole truth and nothing but the truth, so help  
19 you God?

20 THE WITNESS: I do.

21 THE COURT: Be seated to my immediate left, respond  
22 to questions from counsel. Speak up clearly for the benefit  
23 of counsel and also for purposes of the record. You will note  
24 that the court reporter is seated to your immediate left. She  
25 will need to hear you clearly in order to record your answers.

1 Thank you.

2

3

**DIRECT EXAMINATION**

4 BY MR. BUHMAN:

5 Q Deputy, please state your name and spell your last  
6 name.

7 A My name is Shawn Radmall. R-A-D-M-A-L-L.

8 Q And have you been employed by the Utah County  
9 Sheriff's Department?

10 A I have. I am.

11 Q On January 2nd of 2005, did you have contact with  
12 Bradford Dale Gettling?

13 A I did.

14 Q Is he present in the courtroom?

15 A He is.

16 Q Would identify where he is?

17 A At the defendant's table in the light blue shirt.

18 Q Would you describe where, and when, and how that  
19 occurred?

20 A On that day I was on patrol. I initiated a traffic  
21 stop for some traffic violations, a vehicle that was crossing  
22 left of center expecting possibly a DUI.

23 Q Where did this occur?

24 A This was in Orem. I followed on Geneva Road from  
25 Provo into Orem and then onto 1300 South in Orem. The vehicle



1 made a couple of different lane violations. I made a stop on  
2 the vehicle in the parking lot of Wendy's on 1300 South.

3 Q What do you mean by lane violations?

4 A Initially when I followed the vehicle, it crossed  
5 left of center at least twice. As we approached the  
6 intersection on 1300 South, it slowed. It never did come to a  
7 complete stop. It made a right-hand turn on 1300 South. As we  
8 got on to 1300 South, as it was headed eastbound, it started to  
9 drift over into the left lane, crossed over the dotted lines,  
10 and then abruptly pulled into the right lane. That's when I  
11 initiated a stop.

12 Q Okay. Go on. Who was present in the vehicle?

13 A In the vehicle the driver of it -- the person I made  
14 contact with was an individual named Steven Canals.

15 Q Where was Mr. Gettling?

16 A Mr. Gettling was in the backseat seated directly  
17 behind the driver.

18 Q Did you eventually end up arresting the driver?

19 A I did.

20 Q Did you then search the car?

21 A I did.

22 Q Describe how that occurred, please?

23 A I arrested the driver, removed him from the vehicle,  
24 placed him in mine. I went back and advised both occupants of  
25 the vehicle that I was going to run my dog. I'm a K9 handler.

1 I was going to run the K9 around the vehicle. I noticed a  
2 little bit of furtive movement from Mr. Gettling. He acted  
3 nervous about it.

4 I noticed when I placed the other individual in my vehicle  
5 he was doing some kind of movement in the backseat. At that  
6 point, I decided to remove them both from the vehicle. I had a  
7 UVSC officer backing me up. I had them stand off with her  
8 while I did the K9 sniff.

9 I ran my dog around the vehicle. I got indications in two  
10 different places on the vehicle. One, at the top of the  
11 driver's side window, it was cracked down about two inches. He  
12 jumped up there and scratched on the window, and then the other  
13 side was the back passenger's side door, on the door handle, he  
14 indicated there as well.

15 Q On the passenger's side or the driver's side?

16 A On the passenger's side rear door.

17 Q Was Mr. Gettling seated on the passenger's side or  
18 the driver's side?

19 A He was on the driver's side.

20 Q So did you enter the car?

21 A I did.

22 Q With the dog?

23 A With the dog. I advised the owner of what I had  
24 found, and I was going to place my dog in the vehicle. She --  
25 I'm sorry, the passenger in the front was the owner of the

1 vehicle.

2 Q So there were three --

3 A There was three people --

4 Q -- in the car --

5 A There were --

6 (Court reporter interrupts.)

7 Q (MR. BUHMAN) There were three people in the car?

8 A There were. There was a front seat passenger named  
9 Amber Childs, I believe. She was the owner of the vehicle. I  
10 just told her what I was doing. She said she was fine with it.  
11 There was no reason -- there shouldn't be anything in the car.

12 I placed my dog in the vehicle. He initially did what we  
13 called an alert to the floorboard area. He never did indicate  
14 by scratching or anything, just heavy sniffing. As he moved  
15 through the vehicle, he then got in the backseat. On the  
16 passenger's side of the rear seat there was some bags, some  
17 luggage. At that point, he tried to get underneath the luggage  
18 and indicated on the seat. Tried to --

19 Q Did you eventually search that luggage area?

20 A I did. I removed all the luggage out of the way.  
21 Underneath it, I found a hard glass case, like you carry your  
22 glasses in. When I removed that, opened it, I found meth  
23 paraphernalia and methamphetamine inside of it.

24 Q You found what?

25 A Methamphetamine and meth paraphernalia.

1 Q What was the methamphetamine in?

2 A It was in a small plastic, like, a small plastic  
3 baggy.

4 Q What was with the paraphernalia found?

5 A A glass pipes, there was a little spoon, some straws.

6 Q And did you send that methamphetamine to a Crime Lab  
7 for testing?

8 A I did.

9 MR. BUHMAN: May I approach?

10 THE COURT: You may.

11 MR. BUHMAN: I've shown Mr. Gale this.

12 Q (MR. BUHMAN) I'm showing you a document marked State's  
13 Exhibit No. 1, is that the result you got back from the Crime  
14 Lab?

15 A It is.

16 Q What was the result?

17 A The result on both substances that I sent up, were  
18 both tested positive as methamphetamine.

19 MR. BUHMAN: Move to admit Exhibit No. 1.

20 MR. GALE: No objection?

21 THE COURT: It may be received.

22 (Plaintiff's Exhibit No. 1 was received into evidence.)

23 Q (MR. BUHMAN) Was the traffic -- did you speak to  
24 Mr. Gettling about the items that you found?

25 A I did.

1 Q And what -- did you Mirandize him?

2 A I did not at that time. I, basically, I removed him  
3 from the vehicle, took him back.

4 I said, "This is what I found in the vehicle."  
5 The owner said, "Those are not mine."  
6 I talked to Mr. Canals.  
7 He said, "They're not mine."  
8 Mr. Gettling, at that point, said, "Well, I don't want to  
9 talk about."

10 I'm sorry. He didn't say -- he said --

11 Q Take a minute and -- do you have your report? Take a  
12 minute and refresh your memory, please.

13 A Okay. He didn't deny the ownership of them. At the  
14 time that Ms. Childs said it wasn't his, he nodded his head,  
15 looked at me, and said, "Don't make me tell you. Don't make me  
16 say it."

17 Q Did you eventually determine whose luggage --

18 A I did. It was Mr. Gettling's.

19 Q How did you determine that?

20 A He advised me that it was his, and asked me to remove  
21 some items that he wanted Ms. Childs to deliver to someone. It  
22 was a Christmas cards, some other items he wanted delivered.

23 Q Did this traffic stop occur within a thousand feet of  
24 UVSC?

25 A It did. It was directly across the --

1 Q What about -- I'm sorry.

2 A It's directly across the street from their property.

3 Q What about the Hillcrest Park?

4 A The Hillcrest Park, I'm not exactly sure where it is,  
5 so I can't --

6 Q Within a thousand feet of UVSC?

7 A Yes.

8 MR. BUHMAN: Thank you. That's all I have.

9 THE COURT: You may cross-examine.

10

11 **CROSS-EXAMINATION**

12 BY MR. GALE:

13 Q Which agency was it you say you work for?

14 A Utah County Sheriff.

15 Q So it's Deputy Radmall?

16 A Yes.

17 Q Deputy Radmall, when you observed the car, you said  
18 that it was -- had made some lane violations, is that right?

19 A Correct.

20 Q And so the vehicle was stopped for a traffic offense,  
21 is that right?

22 A Correct.

23 Q And you found that the driver of the vehicle was  
24 Steven Lee Canals?

25 A Correct.

1 Q Right? And then you arrested Mr. Canals?

2 A I did.

3 Q And what was it that you said you arrested Mr. Canals

4 for?

5 A He had some outstanding warrants and suspended

6 license.

7 Q Okay. So you arrested Mr. Canals for some

8 outstanding warrants. And at that time, you hadn't located any

9 drugs or anything like that, had you?

10 A I had not.

11 Q You didn't have any reason to believe that Mr. Canals

12 or anybody else in the vehicle was using drugs, did you?

13 A No, no reason to believe that.

14 Q And so, at that point, you went to do a search of the

15 vehicle pursuant to the arrest of Mr. Canals?

16 A Actually, I did a free air sniff of the vehicle.

17 Q Okay. So you did a free air sniff of the vehicle,

18 and was this -- this was after you got Mr. Canals out of the

19 vehicle, is that right?

20 A Correct.

21 Q Okay. So Mr. Canals was already under arrest?

22 A He was.

23 Q Okay. And was he detained in your vehicle or was he

24 standing?

25 A He was in my vehicle.

1 Q Okay. So you stopped the car, right?

2 A Correct.

3 Q You found Mr. Canals had some warrants, you arrested

4 him?

5 A I did.

6 Q You put him in your vehicle?

7 A Yes.

8 Q And then you went back to the vehicle with your K9?

9 A Correct.

10 Q And you ran the K9 around the exterior of the

11 vehicle?

12 A Yes.

13 Q Okay. The two occupants, Amber Childs and the

14 defendant in this case, Mr. Gettling, where were they when you

15 ran the dog around the vehicle?

16 A I had them exit the vehicle. They were standing back

17 to the rear of it with the UVSC officer.

18 Q You already asked them to exit the vehicle so you

19 could run the K9 around the vehicle?

20 A Yes.

21 Q You told them to remain, where, at the rear of the

22 vehicle?

23 A Basically, I think they were sitting on the hood of

24 her patrol vehicle behind me. I had them got out. There was a

25 little bit of furtive movement, officer safety, I didn't want a



1 problem.

2 Q You told them to get out of the vehicle?

3 A I asked them to and they both said they would. I  
4 didn't force them out of the vehicle, no.

5 Q So you asked them to get out of the vehicle. You had  
6 them remain with the UVSC officer?

7 A Yes.

8 Q At that point, they weren't free to leave, were they?

9 A I wasn't detaining them, but, no, they probably  
10 weren't free to leave.

11 Q You didn't tell them they could leave?

12 A No.

13 Q And so at that point you ran the dog around the  
14 vehicle, and the dog, did he indicated on the exterior driver's.  
15 side of the vehicle?

16 A Yes.

17 Q The driver's side rear, is that right?

18 A The passenger's side rear.

19 Q I'm sorry. The passenger's side rear?

20 A Yes, I believe so. I can double check.

21 Q Could you check that.

22 A I believe it was the passenger's side rear door  
23 handle. It appears in my report I put the rear driver's side  
24 door handle, but it was the passenger's side door handle.

25 Q In your report you said that your dog indicated on

1 the rear driver's side door handle?

2 A I believe that's what I put in my report. That's a  
3 mistake.

4 Q Today you are says it different from that?

5 A It was the passenger's side.

6 Q Now, the driver of the vehicle was Steven Lee Canals?

7 A Correct.

8 Q Amber Childs was the passenger. Where was she  
9 sitting?

10 A Front driver's side -- I'm sorry, front passenger's  
11 side seat.

12 Q And Mr. Gettling was also a passenger. Where was he  
13 sitting?

14 A He was sitting directly behind the driver.

15 Q So where the K9 indicated on the exterior of the  
16 vehicle would have been directly behind Amber Childs, is that  
17 right?

18 A Correct.

19 Q After the K9 indicated on the rear of the vehicle  
20 exterior, you wanted to do an interior sniff of the vehicle, is  
21 that right?

22 A That is.

23 Q Did it indicate anywhere else on the exterior of the  
24 vehicle?

25 A Just the two places that I mentioned.

1 Q Okay. The driver's side -- the two places were the  
2 passenger's side rear door handle?

3 A Correct.

4 Q And the driver's side front door?

5 A The top of the window where the window was cracked  
6 down. He jumped up. There was a gap in the window. He  
7 scratched at the window.

8 Q And that was the driver's side window?

9 A Yes.

10 Q And so then you had -- so there were the two places  
11 that it indicated, and that would have been where Mr. Canals  
12 was sitting and directly behind where Amber Childs was sitting,  
13 is that right?

14 A Correct.

15 Q And so then you put the K9 inside the vehicle, the K9  
16 did not alert on the front driver's seat area, but sniffed that  
17 area, is that right?

18 A He did an alert. He did not indicate.

19 Q He -- I'm sorry. I'm not --

20 A It's just basically heavy sniffing. He got really  
21 interested.

22 Q So he did an alert, but didn't indicate there?

23 A Correct.

24 Q And then he did indicate in the rear passenger side?

25 A Yes.

1 Q Where the luggage was?

2 A Yes.

3 Q That's directly behind Amber Childs?

4 A Yes.

5 Q You spoke with Mr. Gettling about -- you spoke with  
6 Mr. Gettling about the substances you located in the luggage,  
7 is that right?

8 A I did.

9 Q And, at this point, he was being detained, right?

10 A He was still standing there. I wasn't telling him he  
11 had to stay. Yeah, I guess considered he was detained.

12 Q This was after the dog had alerted, had done all the  
13 alerts?

14 A Correct.

15 Q Okay. So after the dog had done all the alerts, then  
16 you went to talk to him?

17 A Yes.

18 Q Okay. You would have kept him there if he had tried  
19 to walk away?

20 A Probably.

21 Q Okay. And, at that point, you didn't read him his  
22 Miranda rights?

23 A I did not, but I didn't ask him any questions either.

24 Q You asked him what the -- who the luggage belonged  
25 to, didn't you?

1           A     No. That was later after he was under arrest. I sat  
2 the stuff I found on the hood, and said, "This is what I  
3 found."

4           He responded to me. I didn't ask him.

5           Q     You didn't ask him a question, but what you did is  
6 you set the items on the hood, and then you said, "This is what  
7 I found"?

8           A     I said -- yeah, I just sat them there, said, "This is  
9 what I found."

10          I got responses from both parties.

11          Q     You knew he was standing there when you set it there?

12          A     Yeah.

13          Q     You were setting it in his view?

14          A     Yeah.

15          Q     And so then, I believe, it was -- you said that his  
16 response was, "Don't make me tell you whose it is"?

17          A     Yes.

18          Q     And Amber Childs' response was?

19          A     It was not hers.

20          Q     That it wasn't hers. And then you arrested  
21 Mr. Gettling?

22          A     I did.

23          Q     And then, at that point, did you read him his Miranda  
24 rights?

25          A     I did not.

1 Q Then you asked him who the luggage was?

2 A No. Actually, he asked me if I could remove some  
3 stuff out of the luggage to give to Amber because he was going  
4 to jail. I removed the luggage, searched the vehicle, and  
5 found the correspondence in his stuff. I never did ask him if  
6 the luggage was his.

7 Q When he said the luggage was his, that was in  
8 response to what?

9 A There was two bags sitting in the backseat on the  
10 passenger's side on the seat, which is where the stuff -- the  
11 items that I found were hidden underneath those two bags.

12 Q I'm still just a little bit confused about what made  
13 him say, "That luggage is mine"?

14 What was it that made --

15 A After he was under arrest and he was going to be  
16 transported to jail he asked me, "Can you get a card out of  
17 that luggage and give it to Amber? She needs to deliver it to  
18 so and so for Christmas."

19 There was other items, phone numbers, things like that he  
20 wanted out.

21 Q He asked you to get items out of the luggage and give  
22 them to Amber?

23 A Correct.

24 Q He didn't actually say, "That luggage is mine"?

25 A No.

1 Q He just said, "Can you get these items out of the  
2 luggage?"

3 A Yes. He advised me he was transient, that was all  
4 off his stuff, but I never really discussed the luggage with  
5 him.

6 MR. GALE: I don't have anything further.

7 THE COURT: Any redirect?

8 MR. BUHMAN: Yes. Please.

9

10 **REDIRECT EXAMINATION**

11 BY MR. BUHMAN:

12 Q Deputy, just to educate me, what is an air sniff of  
13 the vehicle?

14 A A free air sniff is that I have the right to walk my  
15 dog around any vehicle. The air around the vehicle is free. I  
16 don't have to have probable cause to do that. On a stop I  
17 already made an arrest out of, and there was no legal way for  
18 them to remove that vehicle, neither one of them had driver's  
19 licenses, that vehicle is free for me to walk my K9 around at  
20 any time.

21 Q Nobody had a driver's license?

22 A Nobody had a driver's license in the vehicle.

23 Q Let's go back and talk specifically about  
24 Mr. Gettling, where he was when these events occurred. When  
25 you first approached the car, is it correct you were dealing

1 first with Mr. Canals?

2 A Correct.

3 Q When you arrested Mr. Canals, where was Mr. Gettling  
4 at?

5 A He was in the passenger -- I'm sorry, the driver's  
6 side rear seat directly behind the driver.

7 Q Had you had any contact with Mr. Gettling yet?

8 A I had not.

9 Q Had you indicated to him he was supposed to remain  
10 there or do anything?

11 A No. I hadn't even talked to either one of them at  
12 all.

13 Q After you arrested Mr. Canals, go through the  
14 sequence of what you did with Mr. Gettling?

15 A I arrested Mr. Canals and placed him in my vehicle.  
16 At that time -- let me back up. Okay.

17 As I talked to Mr. Canals as I was getting him out, I  
18 asked, "Is there any drugs or anything in the vehicle I need to  
19 know about?"

20 At that point, Ms. Childs said, "No."

21 Mr. Gettling just became nervous. He fidgeted around,  
22 didn't really say anything, just kind of stared at me. I  
23 removed Mr. Canals from the vehicle, placed him under arrest,  
24 put him in my vehicle. At that point, I could see Mr. Gettling  
25 was doing some kind of furtive movement. I could see him doing



1 something along the seat. His arms were down and he was  
2 leaning over towards the passenger side.

3 Q Did that cause you concern?

4 A It does. At that point, I don't know if there was a  
5 weapon in the vehicle, what I've got, so I responded back to  
6 the vehicle, told him that I intended to run my dog around it.  
7 Amber actually advised me that was fine. It was her car and  
8 she didn't car. I wanted both of them, due to the furtive  
9 movement, to be out of the vehicle while I did it, and had them  
10 both get out and stand with the officer UVSC.

11 Q What, exactly, did you tell Mr. Gettling about  
12 getting out of the car?

13 A I just said, "I'm going to run the dog around the  
14 car. I want you both out of the vehicle. I --"

15 Q Did you tell them to remain there?

16 A Once they got out of the car?

17 Q Yes.

18 A I don't recall. I just directed them back to the  
19 other UVSC officer.

20 I don't know if I said, "Stand here or don't."

21 I just said, "Here. Come stand back here."

22 Q Okay. How much time passed between the time that you  
23 told Mr. Gettling to stand over here and you ran your dog  
24 around?

25 A A minute, maybe. I already had my dog out of the

1 vehicle. Normally when I make an arrest, my dog is out for  
2 officer's safety.

3 Q How much time passed between the time that you had  
4 Mr. Gettling stand there and your dog indicated on the vehicle?

5 A The first, probably, 30 seconds, when the first  
6 indications --

7 Q So 30 seconds between the time you told them to stand  
8 there and your dog indicated?

9 A Yes.

10 Q More or less?

11 A Yes.

12 Q A minute ago you said a minute?

13 A Between when I started my sniff, and when I got in  
14 the vehicle, or between when I got my first indications?

15 Q What I'm most curious about is when you told them to  
16 stand there, Mr. Gettling, and your dog actually indicated on  
17 the vehicle?

18 A I misunderstood. That was about a minute before I  
19 probably got started, and then about 30 seconds into the sniff  
20 before he indicated.

21 Q So a minute and a half, more or less?

22 A Yeah.

23 Q When Mr. Gettling -- when you removed him from the  
24 car, did you take any of his possessions?

25 A No.

1           Q     Or driver's license, anything like that?

2           A     No.

3           Q     Did you use your weapon?

4           A     No.

5           Q     Did you handcuff him?

6           A     No.

7           Q     I don't mean to press you. I don't mean to be rude,  
8 but do you recall what exactly you told them?

9           A     I don't. I know when I got them both out I patted  
10 them real quick to make sure they didn't have weapons, then I  
11 walked them back here.

12           I don't know specifically what I said, but I just basically  
13 said, "Stand here with this officer while I do this."

14           I don't know -- I don't remember telling them stand  
15 anywhere specific or do anything.

16           Q     Okay. You say that he was making furtive movements  
17 while you were back with Mr. Canals?

18           A     Yes.

19           Q     We already talked about, but can you describe  
20 specifically as you can what he was doing and why that made  
21 your concerned?

22           A     Basically, I could see him leaning over to the  
23 passenger's side of the vehicle. His hands were down, and  
24 possibly he was looking at something. I just was concerned  
25 that there may be a weapon or something in the vehicle he was

1 trying to get to.

2 MR. BUHMAN: Okay. Thank you.

3 MR. GALE: Just briefly, Judge.

4 THE COURT: Yes, sir.

5

6

**RECROSS-EXAMINATION**

7 BY MR. GALE:

8 Q When you saw the furtive movements, your concerns  
9 were that perhaps he was hiding a weapon or something like  
10 that?

11 A Correct.

12 Q And when you asked Mr. Gettling to get out of the  
13 vehicle so you could run the dog around it, you said, "Can  
14 you --"

15 You got him and Amber Childs out of the vehicle, and you  
16 said, "Could you step back here with Officer so and so," and  
17 they went --

18 A She was already actually back there. I had them both  
19 exit the vehicle and walk back there with me. I patted him  
20 down. She patted -- the UVSC officer was female. She patted  
21 Amber Childs down, then I just left them there. I don't  
22 remember saying, "Sit here, sit there," or do anything.

23 Q So what you did is you got them out of the vehicle,  
24 you asked them to exit the vehicle?

25 A Correct.

1           Q     You walked with them back to where the other officer  
2 was?

3           A     Right.

4           Q     You did a Terry frisk on Mr. Gettling?

5           A     Correct.

6           Q     She did a Terry frisk on Ms. Childs?

7           A     Correct.

8           Q     You left and went back to the vehicle and left them  
9 with the female UVSC officer?

10          A     Yes.

11               MR. GALE: That's all I have.

12               THE COURT: At what stage did you determine that no  
13 one had a license to driver the vehicle?

14               THE WITNESS: One I had arrested Mr. Canals, at that  
15 point I asked, "Does anybody in the vehicle have a license  
16 that can driver this away?"

17               Both of them told me no.

18               THE COURT: All right. You may step down. Does the  
19 State rest?

20               MR. BUHMAN: The State rests.

21               THE COURT: Defense?

22               MR. GALE: We don't intend to call any witnesses.  
23 Mr. Gettling does not intend to take the stand at this point.

24               THE COURT: Okay. Submit it.

25               MR. BUHMAN: Submit.

1 MR. GALE: We'll submit it.

2 THE COURT: Let's turn to the charges. Count One,  
3 possession or use of a controlled substance in a drug-free  
4 zone, a second degree felony, allegedly occurred on or about  
5 January 2, 2005, in Utah County, Utah, in that the defendant  
6 did knowingly, intentionally, possess or use methamphetamine,  
7 a Schedule II controlled substance, committed the offense in a  
8 drug-free zone.

9 There is probable cause that that offense was  
10 committed and probable cause that this defendant committed  
11 that offense. I don't rely upon the park because I am not  
12 aware of the Hillcrest Park area in connection with UVSC, but  
13 the Court is aware of the location in connection -- the  
14 location of the stop in connection with UVSC. Certainly  
15 that's within a thousand feet.

16 Count two is possession of drug paraphernalia in a  
17 drug-free zone, a class A misdemeanor, in that the defendant  
18 on or about January 2, 2005, in Utah County, Utah, while in a  
19 drug-free zone -- which I've already found, the Court has  
20 found it was in a drug-free zone -- did knowingly,  
21 intentionally, or recklessly use or possess with the intent to  
22 use drug paraphernalia to plant, propagate, cultivate, grow,  
23 harvest, manufacture, compound, convert, produce, process,  
24 prepare, test, analyze, pack, repack, store, contain, conceal,  
25 inject, ingest, inhale, or other introduce a controlled

1 substance into the human body.

2 I need the exhibit because it made reference both to  
3 the drugs of methamphetamine from the State Crime Lab, but  
4 then it made also reference to drug paraphernalia. I think it  
5 was maybe submitted. There was testimony related to drug  
6 paraphernalia, and I can't recall whether it was a pipe, or  
7 glass tubing, or --

8 MR. BUHMAN: One of those refers to a driver's item,  
9 not a part of the hearing today.

10 THE COURT: Okay. Is it the claim of the State that  
11 the plastic baggies are, in fact, the drug paraphernalia  
12 because the drugs were stored within the --

13 MR. BUHMAN: No. I'm sorry. Deputy Radmall  
14 testified that there was a methamphetamine pipe, and then the  
15 baggies, what is tested in that, was positive for  
16 methamphetamine.

17 THE COURT: Very well. I'll find there is probable  
18 cause as it relates to the second charge also, possession of  
19 drug paraphernalia in a drug-free zone, a class A misdemeanor.  
20 That's my recollection also. And, in addition, that crime was  
21 committed and Mr. Bradford Dale Gettling committed that crime,  
22 so there is probably cause, set the matter for?

23 MR. BUHMAN: We'd like it set for arraignment,  
24 please, in a couple of weeks.

25 THE COURT: Okay.

1 MR. BUHMAN: We move to withdraw the exhibit.

2 THE COURT: Grant your motion. The record will  
3 specifically reflect that the Court is providing Mr. Buhman  
4 with State's Exhibit No. 1. That's being released back to him  
5 now. We can set it for a couple of weeks today for purpose of  
6 entry of plea/further proceedings.

7 THE CLERK: March 8th.

8 MR. GALE: Can we set it the week before or week the  
9 week after?

10 THE COURT: March 15th at 8:30 for the purpose of  
11 further proceedings/entry of plea.

12 Sir, I'm going to have you step forward and sign a  
13 promise to appear in connection with that next date. You will  
14 be back on that date for the purpose of the arraignment.

15 Anything further from the State of Utah?

16 MR. BUHMAN: No, Your Honor.

17 THE COURT: Anything further from defense?

18 MR. GALE: No, Your Honor.

19 THE COURT: Very well.

20 (Proceedings in the above-entitled  
21 Matter were concluded.)  
22  
23  
24  
25



-- [45]	associated [1] 30/14	certify [1] 30/4
<b>A</b>	at [33]	charge [1] 28/18
about [19]	Attorney [1] 2/4	charges [1] 27/2
about -- [2] 11/1 17/5	Avenue [1] 2/10	check [2] 14/20 14/21
above-entitled [2] 29/20	aware [2] 27/12 27/13	Childs [12]
30/7	away [2] 17/19 26/16	Childs' [1] 18/18
abruptly [1] 6/10	<b>B</b>	Christmas [2] 10/22 19/18
across [2] 10/25 11/2	back [20]	claim [1] 28/10
acted [1] 7/2	backing [1] 7/7	class [2] 27/17 28/19
actually [6] 12/16 19/2	backseat [4] 6/16 7/5 8/15	clearly [2] 4/22 4/25
19/24 22/7 23/16 25/18	19/9	clerk [1] 4/11
addition [1] 28/20	baggies [2] 28/11 28/15	come [3] 4/11 6/6 22/21
admit [1] 9/19	baggy [1] 9/3	committed [5] 27/7 27/10
advised [5] 6/24 7/23	bags [3] 8/16 19/9 19/11	27/10 28/21 28/21
10/20 20/3 22/7	basically [5] 10/2 13/23	complete [1] 6/7
aforesaid [1] 30/7	16/20 24/12 24/22	compound [1] 27/23
after [8] 12/18 15/19	be [10] 4/11 4/17 4/21	computer-aided [1] 30/10
17/12 17/15 18/1 19/15	8/11 9/21 19/15 22/9 24/7	conceal [1] 27/24
21/13 29/9	24/25 29/14	concern [1] 22/3
agency [1] 11/13	became [1] 21/21	concerned [2] 24/21 24/24
ago [1] 23/12	because [4] 19/3 27/11	concerns [1] 25/8
air [5] 12/16 12/17 20/12	28/2 28/12	concluded [1] 29/21
20/14 20/15	been [4] 4/14 5/8 15/16	confused [1] 19/12
alert [4] 8/13 16/16 16/18	16/11	connection [4] 27/12 27/13
16/22	before [6] 1/10 4/7 4/17	27/14 29/13
alerted [1] 17/12	23/18 23/20 29/8	connection -- [1] 27/13
alerts [2] 17/13 17/15	behalf [2] 4/5 4/6	considered [1] 17/11
all [8] 8/20 11/8 17/12	behind [7] 6/17 13/24	consisting [1] 30/10
17/15 20/3 21/12 26/11	15/14 15/16 16/12 17/3	constitutes [1] 30/12
26/18	21/6	contact [3] 5/11 6/14 21/7
allegedly [1] 27/4	being [2] 17/9 29/4	contain [1] 27/24
along [1] 22/1	believe [7] 8/9 12/11	controlled [3] 27/3 27/7
already [7] 12/21 13/18	12/13 14/20 14/22 15/2	27/25
20/17 22/25 24/19 25/18	18/15	convert [1] 27/23
27/19	belonged [1] 17/24	correct [20]
also [5] 4/23 15/12 28/4	benefit [1] 4/22	correspondence [1] 19/5
28/18 28/20	between [5] 22/22 23/3	could [9] 13/19 14/11
am [5] 5/10 27/11 30/4	23/7 23/13 23/14	14/21 19/2 21/24 21/25
30/14 30/15	bit [3] 7/2 13/25 19/12	24/22 25/13 25/16
Amber [13]	blue [1] 5/17	counsel [4] 4/9 4/22 4/23
analyze [1] 27/24	body [1] 28/1	30/15
and -- [1] 10/11	both [13]	Count [2] 27/2 27/16
answers [1] 4/25	BRADFORD [4] 1/7 4/4 5/12	COUNTY [9] 1/2 1/12 2/4
any [11]	28/21	2/9 5/8 11/14 27/5 27/18
anybody [2] 12/12 26/15	briefly [1] 25/3	30/3
anything [12]	BUHMAN [5] 2/4 4/6 5/4	couple [3] 6/1 28/24 29/5
anywhere [2] 15/23 24/15	20/11 29/3	court [11]
appear [1] 29/13	but [13]	courtroom [1] 5/14
appears [1] 14/23	<b>C</b>	cracked [2] 7/11 16/5
approach [1] 9/9	call [2] 4/8 26/22	crime [5] 9/6 9/13 28/3
approached [2] 6/5 20/25	called [2] 4/14 8/13	28/20 28/21
are [4] 4/17 10/5 15/4	calls [1] 4/10	CROSS-EXAMINATION [1]
28/11	can [9] 14/20 19/16 20/1	11/11
area [5] 8/13 8/19 16/16	24/19 24/20 25/13 26/16	cross-examine [1] 11/9
16/17 27/12	29/5 29/8	crossed [2] 6/4 6/9
arms [1] 22/1	can't [2] 11/5 28/6	crossing [1] 5/21
around [14]	can't -- [1] 11/5	CSR [2] 1/23 30/22
arraignment [2] 28/23	Canals [21]	cultivate [1] 27/22
29/14	car [14]	curious [1] 23/15
arrest [7] 12/15 12/21	car -- [1] 8/4	<b>D</b>
18/1 19/15 20/17 21/23	card [1] 19/16	Dale [3] 4/4 5/12 28/21
23/1	cards [1] 10/22	date [2] 29/13 29/14
arrested [10] 6/23 12/1	carry [1] 8/21	DAVIS [1] 1/10
12/3 12/7 13/3 18/20 21/3	case [6] 1/6 4/3 4/4 4/17	day [2] 5/20 30/17
21/13 21/15 26/14	8/21 13/14	dealing [1] 20/25
arresting [1] 6/18	cause [6] 20/16 22/3 27/9	decided [1] 7/6
as [12]	27/10 28/18 28/22	defendant [7] 1/8 2/8 4/5
ask [4] 17/23 18/4 18/5	center [3] 2/5 5/22 6/5	13/14 27/5 27/10 27/17
19/5	Certainly [1] 27/14	defendant's [1] 5/17
		Defenders [1] 2/9

defense [2] 26/21 29/17	10/17	half [1] 23/21
degree [1] 27/4	evidence [1] 9/22	hand [1] 30/17
deliver [2] 10/21 19/17	exactly [3] 11/4 22/11	handcuff [1] 24/5
delivered [1] 10/22	24/8	handle [6] 7/13 14/23
deny [1] 10/13	EXAMINATION [2] 5/3 20/10	14/24 14/24 15/1 16/2
Department [1] 5/9	examined [1] 4/15	handler [1] 6/25
Deputy [8] 2/4 4/10 4/13	exhibit [6] 9/13 9/19 9/22	hands [1] 24/23
5/5 11/15 11/17 20/12	28/2 29/1 29/4	hard [1] 8/21
28/13	EXHIBITS [1] 3/8	harvest [1] 27/23
describe [3] 5/18 6/22	exit [4] 13/16 13/18 25/19	has [1] 27/19
24/19	25/24	have [17]
detained [3] 12/23 17/9	expecting [1] 5/22	having [1] 4/14
17/11	exterior [5] 13/10 14/14	he [68]
detaining [1] 14/9	15/15 15/20 15/23	He -- [1] 16/19
determine [3] 10/17 10/19	<b>F</b>	head [1] 10/14
26/12	fact [1] 28/11	headed [1] 6/8
did [59]	FEBRUARY [2] 1/19 4/1	hear [1] 4/25
didn't [16]	feet [3] 10/23 11/6 27/15	hearing [3] 1/18 4/8 28/9
different [3] 6/1 7/10	felony [1] 27/4	heavy [2] 8/14 16/20
15/4	female [2] 25/20 26/9	help [1] 4/18
DIRECT [1] 5/3	fidgeted [1] 21/21	her [4] 7/7 8/10 13/24
directed [1] 22/18	find [1] 28/17	22/7
directly [8] 6/16 10/25	fine [2] 8/10 22/7	here [10] 4/5 4/6 22/20
11/2 15/14 15/16 16/12	first [6] 4/8 20/25 21/1	22/21 22/21 22/23 24/11
17/3 21/6	23/5 23/5 23/14	24/13 25/16 25/22
discussed [1] 20/4	floorboard [1] 8/13	herein [1] 30/15
DISTRICT [2] 1/1 1/12	followed [2] 5/24 6/4	hers [2] 18/19 18/20
do [13]	follows [1] 4/15	hidden [1] 19/11
document [1] 9/12	force [1] 14/4	hiding [1] 25/9
does [4] 22/4 26/15 26/18	forward [2] 4/11 29/12	Hillcrest [3] 11/3 11/4
26/23	found [17]	27/12
dog [22]	FOURTH [2] 1/1 1/12	him [33]
doing [5] 7/5 8/10 21/25	free [7] 12/16 12/17 14/8	his [14]
21/25 24/20	14/10 20/14 20/15 20/19	Honor [2] 29/16 29/18
don't [19]	frisk [2] 26/4 26/6	HONORABLE [1] 1/10
done [2] 17/12 17/15	front [6] 7/25 8/8 15/10	hood [3] 13/23 18/2 18/6
door [9] 7/13 7/13 7/16	15/10 16/4 16/16	how [5] 5/18 6/22 10/19
14/22 14/24 14/24 15/1	further [5] 20/6 29/6	22/22 23/3
16/2 16/4	29/11 29/15 29/17	human [1] 28/1
dotted [1] 6/9	furtive [6] 7/2 13/25	<b>I</b>
double [1] 14/20	21/25 22/8 24/16 25/8	I -- [1] 22/14
down [7] 7/11 16/6 22/1	<b>G</b>	I'll [1] 28/17
24/23 25/20 25/21 26/18	GALE [5] 2/9 4/5 9/11	I'm [16]
drift [1] 6/9	11/12 25/7	I've [3] 9/11 22/5 27/19
driver [10] 6/13 6/17 6/18	gap [1] 16/6	identify [1] 5/16
6/23 11/23 15/6 15/14 21/6	Geneva [1] 5/24	if [5] 17/18 19/2 19/5
26/13 26/16	get [9] 8/17 14/2 14/5	22/4 22/20
driver's [19]	19/16 19/21 20/1 22/10	II [1] 27/7
drug [6] 27/16 27/22 28/4	25/1 25/12	immediate [2] 4/21 4/24
28/5 28/11 28/19	getting [2] 21/17 22/12	in [75]
drug-free [6] 27/3 27/8	GETTLING [29]	inches [1] 7/11
27/17 27/19 27/20 28/19	Gettling's [1] 10/18	inclusive [1] 30/11
drugs [5] 12/9 12/12 21/18	give [4] 4/17 19/3 19/17	indicate [5] 8/13 15/23
28/3 28/12	19/21	16/18 16/22 16/24
due [1] 22/8	glass [3] 8/21 9/5 28/7	indicated [12]
DUI [1] 5/22	glasses [1] 8/22	indications [3] 7/9 23/6
duly [1] 4/14	go [4] 4/3 6/12 20/23	23/14
<b>E</b>	21/13	indications -- [1] 23/6
East [1] 2/5	God [1] 4/19	individual [2] 6/14 7/4
eastbound [1] 6/8	going [7] 6/25 7/1 7/24	ingest [1] 27/25
educate [1] 20/12	19/3 19/15 22/13 29/12	inhale [1] 27/25
either [2] 17/23 21/11	got [16]	initially [2] 6/4 8/12
else [2] 12/12 15/23	Grant [1] 29/2	initiated [2] 5/20 6/11
employed [1] 5/8	grow [1] 27/22	inject [1] 27/25
end [1] 6/18	guess [1] 17/11	inside [2] 8/23 16/15
enter [1] 7/20	<b>H</b>	intend [2] 26/22 26/23
entry [2] 29/6 29/11	had [30]	intended [1] 22/6
even [1] 21/11	had -- [1] 16/10	intent [1] 27/21
events [2] 20/24 30/16		intentionally [2] 27/6
		27/21

<b>I</b>	<b>M</b>	<b>No. [5]</b> 4/4 4/4 9/13 9/19 29/4
interested [2] 16/21 30/16	made [11]	Nobody [2] 20/21 20/22
interior [1] 15/20	made -- [1] 19/14	nodded [1] 10/14
interrupts [1] 8/6	make [5] 10/15 10/15 18/16 23/1 24/10	Normally [1] 23/1
intersection [1] 6/6	making [1] 24/16	North [2] 1/13 2/10
into [6] 5/25 6/9 6/10 9/22 23/19 28/1	manufacture [1] 27/23	not [17]
introduce [1] 27/25	March [2] 29/7 29/10	not -- [1] 16/19
is [48]	marked [1] 9/12	note [1] 4/23
it [62]	matter [4] 4/7 28/22 29/21 30/7	nothing [1] 4/18
it -- [1] 6/13	may [7] 4/8 9/9 9/10 9/21 11/9 24/25 26/18	noticed [2] 7/1 7/4
it's [4] 4/3 11/2 11/15 16/20	maybe [2] 22/25 28/5	now [3] 4/17 15/6 29/5
item [1] 28/8	me [20]	numbers [1] 19/19
items [8] 9/24 10/21 10/22 18/6 19/11 19/19 19/21 20/1	mean [3] 6/3 24/7 24/7	<b>O</b>
<b>J</b>	memory [1] 10/12	objection [1] 9/20
jail [2] 19/4 19/16	mentioned [1] 15/25	observed [1] 11/17
January [3] 5/11 27/5 27/18	meth [2] 8/22 8/25	occasion [1] 30/6
Jeff [1] 4/6	methamphetamine [9] 8/23 8/25 9/1 9/6 9/18 27/6 28/3 28/14 28/16	occupants [2] 6/24 13/13
JEFFREY [1] 2/4	mine [5] 6/24 10/5 10/7 19/13 19/24	occur [2] 5/23 10/23
Judge [1] 25/3	minute [7] 10/11 10/12 22/25 23/12 23/12 23/18 23/21	occurred [4] 5/19 6/22 20/24 27/4
JUDICIAL [1] 1/1	Miranda [2] 17/22 18/23	off [2] 7/7 20/4
jumped [2] 7/12 16/6	Mirandize [1] 10/1	offense [4] 11/20 27/7 27/9 27/11
just [17]	misdemeanor [2] 27/17 28/19	officer [11]
<b>K</b>	mistake [1] 15/3	officer's [1] 23/2
kept [1] 17/18	misunderstood [1] 23/18	Official [1] 30/4
kin [1] 30/14	more [2] 23/10 23/21	Okay [19]
kind [3] 7/5 21/22 21/25	most [1] 23/15	on [40]
knew [1] 18/11	motion [1] 29/2	Once [1] 22/16
know [6] 21/19 22/4 22/20 24/9 24/12 24/14	move [2] 9/19 29/1	one [7] 7/10 20/18 21/11 26/13 26/14 27/2 28/8
know -- [1] 24/14	moved [1] 8/14	onto [1] 5/25
knowingly [2] 27/6 27/20	movement [5] 7/2 7/5 13/25 21/25 22/9	opened [1] 8/22
<b>L</b>	movements [2] 24/16 25/8	or [29]
Lab [3] 9/6 9/14 28/3	MR [5] 5/4 11/12 20/11 21/24 25/7	or -- [1] 28/7
lane [5] 6/1 6/3 6/9 6/10 11/18	Mr. [48]	order [1] 4/25
last [1] 5/5	Mr. Bradford [1] 28/21	Orem [3] 5/24 5/25 5/25
later [1] 18/1	Mr. Buhman [1] 29/3	other [7] 7/4 7/12 10/22 19/19 22/19 26/1 27/25
leaning [2] 22/2 24/22	Mr. Canals [18]	otherwise [1] 30/14
least [1] 6/5	Mr. Gale [1] 9/11	out [24]
leave [3] 14/8 14/10 14/11	Mr. Gettling [23]	outstanding [2] 12/5 12/8
Lee [2] 11/24 15/6	Mr. Gettling -- [1] 23/23	over [5] 6/9 6/9 22/2 22/23 24/22
left [8] 4/21 4/24 5/22 6/5 6/9 25/21 26/8 26/8	Mr. Gettling's [1] 10/18	owner [4] 7/23 7/25 8/9 10/5
legal [1] 20/17	Mr. Jeff [1] 4/6	ownership [1] 10/13
less [2] 23/10 23/21	Mr. Richard [1] 4/5	<b>P</b>
let [1] 21/16	Ms. [4] 10/14 10/21 21/20 26/6	pack [1] 27/24
Let's [3] 4/3 20/23 27/2	Ms. Childs [4] 10/14 10/21 21/20 26/6	PAGE [2] 3/2 3/8
license [6] 12/6 20/21 20/22 24/1 26/13 26/15	much [2] 22/22 23/3	pages [1] 30/10
licenses [1] 20/19	my [21]	paraphernalia [9] 8/23 8/25 9/4 27/16 27/22 28/4 28/6 28/11 28/19
light [1] 5/17	<b>N</b>	park [4] 11/3 11/4 27/11 27/12
like [7] 8/21 9/2 12/9 19/19 24/1 25/9 28/23	name [3] 5/5 5/6 5/7	parking [1] 6/2
lines [1] 6/9	named [2] 6/14 8/8	part [1] 28/9
little [4] 7/2 9/5 13/25 19/12	need [3] 4/25 21/18 28/2	parties [2] 18/10 30/15
located [2] 12/8 17/6	needs [1] 19/17	passed [2] 22/22 23/3
location [2] 27/13 27/14	neither [1] 20/18	passenger [7] 7/25 8/8 15/8 15/12 16/24 21/5 22/2
looked [1] 10/15	nervous [2] 7/3 21/21	passenger -- [1] 21/5
looking [1] 24/24	never [4] 6/6 8/13 19/5 20/4	passenger's [14]
lot [1] 6/2	next [1] 29/13	patrol [2] 5/20 13/24
luggage [19]		patted [4] 24/9 25/19 25/20 25/20
luggage -- [1] 10/17		patted -- [1] 25/20

people [2] 8/3 8/7	reason [3] 8/11 12/11	22/1
people -- [1] 8/3	12/13	seated [4] 4/21 4/24 6/16
perhaps [1] 25/9	reason -- [1] 8/11	7/17
person [1] 6/13	recall [3] 22/18 24/8 28/6	second [2] 27/4 28/18
phone [1] 19/19	received [2] 9/21 9/22	seconds [3] 23/5 23/7
pipe [2] 28/6 28/14	recklessly [1] 27/21	23/19
pipes [1] 9/5	recollection [1] 28/20	see [3] 21/24 21/25 24/22
place [2] 7/24 30/8	record [4] 4/3 4/23 4/25	send [1] 9/6
placed [5] 6/24 7/4 8/12	29/2	sent [1] 9/17
21/15 21/23	RECROSS-EXAMINATION [1]	sequence [1] 21/14
places [4] 7/10 15/25 16/1	25/6	set [7] 4/7 18/6 18/11
16/10	redirect [2] 20/7 20/10	28/22 28/23 29/5 29/8
Plaintiff [3] 1/5 2/3 4/14	reference [2] 28/2 28/4	setting [1] 18/13
Plaintiff's [1] 9/22	refers [1] 28/8	SHAWN [2] 4/13 5/7
plant [1] 27/22	reflect [1] 29/3	she [12]
plastic [3] 9/2 9/2 28/11	refresh [1] 10/12	She -- [1] 7/24
plea [2] 29/6 29/11	related [1] 28/5	Sheriff [1] 11/14
please [6] 4/12 5/5 6/22	relates [1] 28/18	Sheriff's [1] 5/9
10/12 20/8 28/24	released [1] 29/4	shirt [1] 5/17
point [14]	rely [1] 27/11	shouldn't [1] 8/11
positive [2] 9/18 28/15	remain [4] 13/21 14/6 21/9	showing [1] 9/12
possess [2] 27/6 27/21	22/15	shown [1] 9/11
possession [3] 27/3 27/16	remember [2] 24/14 25/22	side [30]
28/18	remove [4] 7/6 10/20 19/2	side -- [2] 15/10 16/1
possessions [1] 23/24	20/18	sign [1] 29/12
possibly [2] 5/22 24/24	removed [7] 6/23 8/20 8/22	sir [2] 25/4 29/12
preliminary [2] 1/18 4/8	10/2 19/4 21/23 23/23	sit [2] 25/22 25/22
prepare [1] 27/24	repack [1] 27/24	sitting [7] 13/23 15/9
present [3] 4/6 5/14 6/12	report [4] 10/11 14/23	15/13 15/14 16/12 16/12
press [1] 24/7	14/25 15/2	19/9
probable [4] 20/16 27/9	reported [3] 1/23 30/6	slowed [1] 6/6
27/10 28/17	30/9	small [2] 9/2 9/2
probably [5] 14/9 17/20	reporter [4] 4/24 8/6 30/5	sniff [8] 7/8 12/16 12/17
23/5 23/19 28/22	30/6	15/20 20/12 20/14 23/13
problem [1] 14/1	REPORTER'S [2] 1/17 30/1	23/19
proceeding [1] 30/9	respond [1] 4/21	sniffed [1] 16/16
proceedings [6] 1/17 29/6	responded [2] 18/4 22/5	sniffing [2] 8/14 16/20
29/11 29/20 30/7 30/13	response [3] 18/16 18/18	so [32]
process [1] 27/23	19/8	solemnly [1] 4/16
produce [1] 27/23	responses [1] 18/10	some [13]
promise [1] 29/13	rest [1] 26/19	someone [1] 10/21
propagate [1] 27/22	rests [1] 26/20	something [4] 22/1 24/24
property [1] 11/2	result [3] 9/13 9/16 9/17	24/25 25/9
providing [1] 29/3	RICHARD [2] 2/9 4/5	sorry [8] 7/25 10/10 11/1
Provo [6] 1/14 2/5 2/10	right [16]	14/19 15/10 16/19 21/5
4/1 5/25 30/17	right-hand [1] 6/7	28/13
Public [1] 2/9	rights [2] 17/22 18/24	South [5] 5/25 6/2 6/6 6/7
pulled [1] 6/10	Road [1] 5/24	6/8
purpose [3] 29/5 29/10	RPR [2] 1/23 30/22	speak [2] 4/22 9/23
29/14	rude [1] 24/7	specific [1] 24/15
purposes [1] 4/23	run [6] 6/25 7/1 13/19	specifically [4] 20/23
pursuant [1] 12/15	22/6 22/13 25/13	24/12 24/20 29/3
put [5] 13/6 14/23 15/2		spell [1] 5/5
16/15 21/24		spoke [2] 17/5 17/5
<b>Q</b>	<b>S</b>	spoon [1] 9/5
question [1] 18/5	safety [2] 13/25 23/2	SS [1] 30/2
questions [2] 4/22 17/23	said [29]	stage [1] 26/12
quick [1] 24/10	said -- [2] 10/10 18/8	stand [11]
<b>R</b>	same [1] 30/12	standing [4] 12/24 13/16
R-A-D-M-A-L-L [1] 5/7	sat [2] 18/1 18/8	17/10 18/11
Radmall [6] 4/10 4/13 5/7	saw [1] 25/8	stared [1] 21/22
11/15 11/17 28/13	say [7] 10/10 10/16 11/13	started [3] 6/8 23/13
ran [5] 7/9 13/10 13/15	19/13 19/24 21/22 24/16	23/19
14/13 22/23	say -- [1] 10/10	state [12]
read [2] 17/21 18/23	saying [1] 25/22	State's [2] 9/12 29/4
real [1] 24/10	says [1] 15/4	stay [1] 17/11
really [3] 16/20 20/4	Schedule [1] 27/7	stenotype [1] 30/9
21/22	scratched [2] 7/12 16/7	step [3] 25/16 26/18 29/12
	scratching [1] 8/14	Steven [3] 6/14 11/24 15/6
	search [3] 6/20 8/19 12/14	still [2] 17/10 19/12
	searched [1] 19/4	stop [7] 5/21 6/1 6/7 6/11
	seat [8] 8/8 8/16 8/18	

<b>S</b>		
stop... [3] 10/23 20/16 27/14	told [9] 8/10 13/21 14/2 22/6 22/23 23/7 23/15 24/8 26/17	Wendy's [1] 6/2
stopped [2] 11/20 13/1	took [1] 10/3	went [6] 6/24 12/14 13/8 17/16 25/17 26/8
store [1] 27/24	top [2] 7/10 16/5	went -- [1] 25/17
stored [1] 28/12	towards [1] 22/2	were [20]
straws [1] 9/5	traffic [5] 5/20 5/21 9/23 10/23 11/20	were -- [1] 8/5
street [1] 11/2	traffic -- [1] 9/23	weren't [2] 14/8 14/10
stuff [5] 18/2 19/3 19/5 19/10 20/4	TRANSCRIPT [1] 1/17	West [1] 1/13
stuff -- [1] 19/10	transcription [2] 30/10 30/13	what [33]
submit [3] 26/24 26/25 27/1	transient [1] 20/3	what -- [1] 10/1
submitted [1] 28/5	transported [1] 19/16	when [23]
substance [3] 27/3 27/7 28/1	tried [3] 8/17 8/18 17/18	where [18]
substances [2] 9/17 17/6	true [1] 30/12	whether [1] 28/6
such [1] 30/6	truth [3] 4/18 4/18 4/18	which [3] 11/13 19/10 27/19
supposed [1] 21/9	trying [1] 25/1	while [5] 7/8 22/9 24/13 24/17 27/18
sure [2] 11/4 24/10	tubing [1] 28/7	who [4] 4/5 6/12 17/24 19/1
suspended [1] 12/5	turn [2] 6/7 27/2	whole [1] 4/18
swear [1] 4/16	twice [1] 6/5	whose [2] 10/17 18/16
sworn [2] 4/11 4/15	two [9] 7/9 7/11 13/13 15/25 16/1 16/10 19/9 19/11 27/16	why [1] 24/20
<b>T</b>		will [5] 4/17 4/23 4/25 29/2 29/13
table [1] 5/17	<b>U</b>	window [7] 7/11 7/12 16/5 16/5 16/6 16/7 16/8
take [4] 10/11 10/11 23/24 26/23	under [4] 12/21 18/1 19/15 21/23	withdraw [1] 29/1
talk [3] 10/9 17/16 20/23	underneath [3] 8/17 8/21 19/11	within [4] 10/23 11/6 27/15 28/12
talked [4] 10/6 21/11 21/17 24/19	University [1] 2/10	witness [3] 3/2 4/8 30/17
Tasha [3] 1/23 30/4 30/22	up [7] 4/22 6/18 7/7 7/12 9/17 16/6 21/16	witnesses [1] 26/22
Taylor [3] 1/23 30/4 30/22	upon [1] 27/11	work [1] 11/13
tell [5] 10/15 14/11 18/16 22/11 22/15	use [5] 24/3 27/3 27/6 27/21 27/22	would [6] 5/16 5/18 14/3 15/16 16/11 17/18
telling [2] 17/10 24/14	using [2] 12/12 30/10	<b>Y</b>
Terry [2] 26/4 26/6	UTAH [22]	yeah [5] 17/11 18/8 18/12 18/14 23/22
test [1] 27/24	UVSC [11]	Yes [22]
tested [2] 9/18 28/15	<b>V</b>	yet [1] 21/7
testified [2] 4/15 28/14	vehicle [78]	you [137]
testimony [2] 4/16 28/5	Very [2] 28/17 29/19	you -- [1] 25/14
testing [1] 9/7	view [1] 18/13	your [23]
Thank [3] 5/1 11/8 25/2	violations [4] 5/21 6/1 6/3 11/18	<b>Z</b>
that [105]	<b>W</b>	zone [6] 27/4 27/8 27/17 27/19 27/20 28/19
that's [9] 6/10 11/8 15/2 15/2 17/3 26/11 27/15 28/20 29/4	walk [4] 17/19 20/14 20/19 25/19	zone -- [2] 27/19 27/20
the -- [3] 10/25 17/24 28/12	walked [2] 24/11 26/1	
their [2] 11/2 30/15	want [3] 10/8 13/25 22/14	
them [37]	wanted [5] 10/21 10/22 15/20 19/20 22/8	
then [21]	warrants [3] 12/5 12/8 13/3	
there [41]	was [118]	
thereof [1] 30/16	was -- [2] 11/18 18/15	
these [2] 20/1 20/24	wasn't [4] 10/14 14/9 17/10 18/20	
they [12]	way [2] 8/20 20/17	
They're [1] 10/7	we [8] 6/5 6/7 8/12 24/19 26/22 29/1 29/5 29/8	
things [1] 19/19	We'd [1] 28/23	
think [2] 13/23 28/4	We'll [1] 27/1	
this [20]	weapon [4] 22/5 24/3 24/25 25/9	
this -- [1] 12/18	weapons [1] 24/10	
those [3] 10/5 19/11 28/8	week [3] 29/8 29/8 29/9	
thousand [3] 10/23 11/6 27/15	weeks [2] 28/24 29/5	
three [3] 8/2 8/3 8/7		
three -- [1] 8/2		
through [3] 8/15 21/13 30/11		
time [11]		
time -- [1] 21/16		
to -- [1] 8/18		

REPORTER'S CERTIFICATE

STATE OF UTAH            )  
                              :  SS.  
County of Utah            )

I, Tasha Taylor, do certify that I am an Official  
Court Reporter in and for the State of Utah.

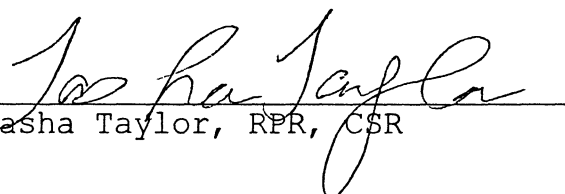
That as such reporter, I reported the occasion of the  
proceedings of the above-entitled matter at the aforesaid time  
and place.

That the proceeding was reported by me in stenotype  
using computer-aided transcription consisting of pages 4  
through 29 inclusive;

That the same constitutes a true and correct  
transcription of the said proceedings;

That I am not of kin or otherwise associated with any  
of the parties herein or their counsel, and that I am not  
interested in the events thereof.

WITNESS my hand at Provo, Utah, this 22 day of  
February, 2006.

  
Tasha Taylor, RPR, CSR

## Addendum C

OCT 20 2008

OCT 21 2008

APPEALS

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

State of Utah,	)	
	)	
Plaintiff and Appellee,	)	ORDER OF CERTIFICATION
	)	
v.	)	Case No. 20080037-CA
	)	
Bradford Dale Gettling,	)	
	)	
Defendant and Appellant.	)	

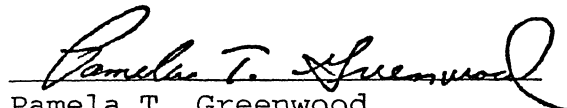
-----

This case is before the court on the parties' stipulated suggestion to certify the case "for immediate transfer to the Supreme Court for determination." Utah R. App. P. 43(a). The parties note the similarity of this case to State v. Baker, Case No. 20080351-SC, currently in briefing. Based upon the affirmative vote of at least four judges of the Utah Court of Appeals,

IT IS HEREBY ORDERED that this appeal is certified for immediate transfer to the Utah Supreme Court for determination.

Dated this 20th day of October, 2008.

FOR THE COURT:

  
Pamela T. Greenwood,  
Presiding Judge



## Addendum D

CLERK GENERAL  
AUG 06 2008  
APPEALS

FILED  
UTAH APPELLATE COURT  
JUL 11 2008

IN THE SUPREME COURT OF THE STATE OF UTAH

-----oo0oo-----

State of Utah,

Plaintiff and Petitioner,

v.

Case No. 20080351-SC

Luke Zachary Baker,

Defendant and Respondent.

---

**ORDER**

This matter is before the court upon a Petition for Writ of certiorari, filed on April 24, 2008.

IT IS HEREBY ORDERED, pursuant to Rule 45 of the Utah Rules of Appellate Procedure, the Petition for Writ of Certiorari is granted as to the following issues:

1. Whether the court of appeals erred in its construction or application of the Fourth Amendment as to the permissible length and scope of detention of passengers in a vehicle that police have stopped.
2. Whether the court of appeals erred in its construction or application of the Fourth Amendment relating to the circumstances under which searches for weapons may be conducted.

A briefing schedule will be established hereafter. Pursuant to rule 2, the court suspends the provision of rule 26(a) that permits the parties to stipulate to an extension of time to submit their briefs on the merits. The parties shall not be permitted to stipulate to an extension. Additionally, absent extraordinary circumstances, no extensions will be granted by motion. The parties shall comply with the briefing schedule upon its issuance.

For The Court:

Dated

7-11-08



Matthew B. Durrant  
Associate Chief Justice

## Addendum E

# Deseret News

---

## Lehi officer shot: Police kill woman who opened fire

**By Sara Israelsen-Hartley**

Deseret News

*Published June 24 2008*

LEHI — Lehi police officers and city officials are reeling from a shooting Monday morning that sent a veteran police captain to the hospital and brought back memories of the last officer they lost.

Just before 9 a.m., police Capt. Harold Terry pulled over a female driver suspected of being impaired, after a gas-station clerk called 911 to report the woman had exhibited slurred speech and poor balance.

After a short disagreement at the car window, the 34-year-old woman, who was still seated in the car, suddenly fired twice with a .38-caliber revolver, hitting Terry twice in the left side of the head, just above his ear. Terry was able to draw his gun and fire once into the car and back-up officers on scene fired five rounds at the woman, killing her.

One bullet exited Terry's head and the other bullet and shrapnel were surgically removed late Monday morning at Utah Valley Regional Medical Center, where he was reported to be resting in stable condition, surrounded by family and friends, said Lehi Police Sgt. Darren Paul.

"This is a trying time for all of us. We're all very close," Paul said, as he stood in front of the police station that bears the name of the last officer they lost — Lt. Joseph Adams. Like Terry, Adams had also stopped a suspected impaired driver when he was killed in August 2001.

The woman fatally shot Monday morning is from Washington state but was living in Provo and attending school in Utah County.

Police have not released her name pending notification of her family.

Officers cannot find any indication that the woman has a criminal record, nor do they believe she was the subject of a warrant. They will be conducting an autopsy and toxicology reports and searching her car to determine what may have caused her behavior, Paul said.

A combined group of investigators and officials from the Utah County Attorney's Office will be reviewing the use of force by the Lehi officers.

"Traffic stops are considered the most dangerous encounters officers face," Paul said. "There are so many unknowns."

Terry had followed the proper protocol for the stop at 1000 E. Main, in front of a busy gas station, Paul said.

"He's a veteran leader here," Paul said. "He's very well respected and professional in how he carries out his duties."

Although police captains are often found in an office behind a desk, Terry was out on the road and responded when he heard the dispatch report.

"Knowing Capt. Terry, I'm not a bit surprised," Paul said. "He leads by example."

Terry has been with Lehi for 16 years and was promoted in February to captain over the patrol division, Paul said.

As well as leading by example, Terry also trained and taught officers.

He had just finished teaching one term of law enforcement operations at Provo College, which focuses on the day-to-day life of a police officer, said Ken Peay, program administrator for the criminal justice degree at Provo College.

"Harold was an excellent teacher," Peay said. "He was really, really good with his students. I think he exemplifies the best of the best," Peay said.

Terry had taken the summer semester off but planned to come back in the fall, Peay said.

"He loved it," Peay said. "He was really good at it, you could tell how much he enjoyed it because of his demeanor in the classroom. ... He made the classes come to life with his experiences."

Several students have called wanting to send messages or flowers to the family, Peay said.

One of the experiences Terry shared with students included being involved in a shoot-out with a former police comrade, Art Henderson, who had chased his ex-wife and her boyfriend through a residential Lehi neighborhood, firing several shots at them in January 2006.

Lehi officers took Henderson down with several shots to the leg, and he was arrested.

Henderson was later charged with numerous felonies, including attempted aggravated murder, but his criminal case ended in April 2006 when he hanged himself in a cell at the Salt Lake Metro Jail.

"It's hard to think that these men and women put their lives on the line," said Lehi Mayor Howard H. Johnson, who stopped by the station to share his love and support with the force.

Johnson, too, mentioned Adams when he talked about Monday's shooting. The poignant memory of the fallen officer is something no one has forgotten.

In the August 2001 shooting, Adams found a bag of cocaine in a car he had pulled over, told the driver he was under arrest and began to handcuff him. Somehow the driver got one hand free, grabbed a handgun from his belt and shot Adams.

Although wounded in two places, Adams was able to return fire, hitting the man multiple times. With a handcuff dangling from one wrist, the shooter, Arturo Javier Scott Welch, got in his car and drove away, according to Utah County Sheriff's officials. He was captured by Salt Lake County Sheriff's deputies at a gas station in Draper.

Welch, 23, pleaded guilty to aggravated murder the following year and was sentenced to life in prison without the possibility of parole.



Her family thought meds had ailment under control

## Woman killed after shooting Lehi cop had history of mental illness

By Melinda Rogers and Nate Carlisle  
The Salt Lake Tribune  
Salt Lake Tribune

Article Last Updated:06/24/2008 01:31:56 PM MDT

The family of Kelly Wark says the 34-year-old had been struggling with mental illness for several months before she opened fire on a Lehi police captain during a traffic stop Monday and was killed by return fire.

"She had struggled with severe mental illness in the past year and was on her way to beginning a new life," Wark's parents, Robert and Mary Wark of Gig Harbor, Wash., wrote in a statement released today. "We offer our deepest condolences to the family of the officer that was hurt."

Gwyn Vukich, a cousin of the Wark family who is serving as the Wark family's spokesperson, would not elaborate on specifics of Kelly Wark's mental illness. But she said her cousin was on medication, and that her death came as a shock for family who believed she had her illness under control.

Wark had moved to Utah to attend massage therapy school and excelled at art, Vukich said. She specialized in portraits and had earned degrees in art and psychology from Western Washington University in Bellingham before she decided she wanted to become a massage therapist, Vukich said.

Her parents called Wark a "gentle, kind and loving person" in the statement.

Police say Wark shot Capt. Harold Terry twice in the head after he pulled her over in response to reports of a woman who might be driving under the influence. Terry was hospitalized in serious condition this afternoon but is expected to make a full recovery, police said.

Sometime before 8:45 a.m., Wark arrived at a gas station on the corner of 850 East and Main Street, according to police. The woman told the attendant she wanted to buy gas, said David Mayson, the station's manager, but then changed her mind as the attendant was in the midst of scanning her debit card. All the while she acted "distracted," Mayson said.

Video footage from the gas station shows Wark walking to her tan Honda Accord and standing there "staring off into space," Mayson said. She drove away after a minute or so and the attendant called police to report the woman might be driving under the influence.

Terry, a 55-year-old who has worked for Lehi police for 16 years, heard the call over his radio and responded. Sgt. Darren Paul said dispatcher records show Terry reported stopping the Accord at 8:52 a.m. near 1000 E. Main Street. Paul said Terry read the Washington state license plate number on the Accord to dispatchers before approaching the car.

Other Lehi officers who arrived to assist Terry with the stop saw him speak with Wark inside the car. She was still seated in her car when the assisting officers saw and heard her fire two shots from a .38-caliber revolver, Paul said.

Both bullets struck Terry on the left side of the head, with at least one bullet striking above the ear and exiting behind the ear, Paul said. Wark exited the car as the officers drew their weapons and ran toward her and Terry.

Two officers fired on Wark, Paul said. Terry also fired one shot but it struck the car, Paul said. Wark, dressed in cargo pants and a dark shirt, died at the scene.

Terry communicated with medical personnel at the scene and later at Utah Valley Regional Medical Center. Paul said Terry underwent at least one surgery Monday that removed bullet fragments.

"We are optimistic and hopeful for a full recovery," Paul said.

Along with having plenty of his own experience, Terry trained other officers from Lehi and around the state in how to make traffic stops. The protocol includes specific ways to park behind the suspect's vehicle and how to walk upon and interact with the driver. Paul said it appears all those protocols were followed Monday.

Close Window

Send To Printer